IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JERRY VALDIVIA, et al.,

Plaintiffs,

vs. **No. CIV S-94-671 LKK/GGH**

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

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FOURTH REPORT OF THE SPECIAL MASTER ON THE STATUS OF CONDITIONS OF THE REMEDIAL ORDER

Background

On May 2, 1994, the lawsuit now known as *Valdivia vs. Schwarzenegger* was filed. The Court certified the case as a class action by order dated December 1, 1994. On June 13, 2002, the Court granted partial summary judgment in favor of the Plaintiffs. On July 23, 2003, the Court ordered the Defendants to submit a remedial plan, with specific guidance regarding "…a prompt preliminary probable cause hearing that affords the parolee rights provided by *Morrissey*, including notice of the alleged violations, the opportunity to appear and present evidence, a conditional right to confront adverse witnesses, an independent decision-maker, and a written report of the hearing.

On March 8, 2004, the Court entered the Stipulated Order for Permanent Injunctive Relief ("Permanent Injunction") containing the agreed-upon elements of the

settlement terms. On July 1, 2004, the Defendants submitted a variety of policies and procedures to the Court. On June 1, 2005, this Court signed a Stipulated Order Regarding Policies and Procedures for Designating Information as Confidential. On June 8, 2005, the Court filed an order finding violation of the Permanent Injunction regarding remedial sanctions. On August 31, 2005, the Court issued an Order concerning parolee attorney access to information in clients' field files.

On August 18, 2005, a Stipulation and Amended Order Re: Special Master Order of Reference was entered; on December 16, 2005, an Order appointing Chase Riveland Special Master was entered; and on January 31, 2006, an Order was entered appointing Virginia Morrison and Nancy Campbell as Deputy Special Masters.

The Special Master filed his first report on September 14, 2006. Subsequently, the Court issued an Order on November 13, 2006 requiring improvements to Defendants' information system and self-monitoring mechanisms. On April 4, 2007, the Court entered a Stipulation and Order Regarding Remedial Sanctions. The second Special Master's report was filed on June 4, 2007 after receiving concurrence from the Court that the report would be delayed.

The Court entered a Revised Stipulated Protective Order Regarding Parolee Defense Counsel Access to Witness Contact Information and Certain Mental Health Information on June 11, 2007. On September 10, 2007, and continued to September 18, 2007, the Court held hearings on motions regarding the issues of whether civil addicts and interstate parolees are part of the *Valdivia* class. On September 25, 2007, the Court issued an Order directing the parties to submit supplemental briefs regarding the civil addict issue by October 5, 2007. On September 28, 2007, the Court issued an Order

denying Plaintiffs' motion regarding interstate parolees, in effect precluding them from the *Valdivia* class. On October 22, 2007, the Court issued an Order that civil addicts are also not a part of the *Valdivia* class. The Third Special Master Report was filed with court on November 28, 2007 and an Order issued by the Court on January 15, 2008 directing

"The court ORDERS that defendants must undertake and sustain work toward the earliest practical solution to providing due process to parolees who appear, either in the judgment of their attorneys or defendants' staff, too mentally ill to participate in revocation proceedings. These efforts must be undertaken in consultation with plaintiffs' counsel and the Special Master. Defendants are further ORDERED as follows:

1. Defendants must provide progress updates to the Special Master and plaintiffs' counsel every three weeks, beginning three weeks after the signing of this order, until the Special Master determines they are no longer necessary.

2. By March 1, 2008, defendants must provide to the Special Master and plaintiffs' counsel a status report on the development of policies and procedures concerning this population. The policies and procedures must include methods to expedite treatment and to provide due process and full rights under the Permanent Injunction.

3. By March 15, 2008, defendants must provide to the Special Master and plaintiffs' counsel the standards defendants intend to use to determine whether a parolee is unable to participate meaningfully in revocation proceedings, by virtue of mental illness, and whether that ability has been regained. The standards should identify the types of staff or other service providers responsible for applying the standards.

4. By April 3, 2008, the defendants must provide to the Special Master and plaintiffs' counsel a detailed plan for implementing these policies and procedures and for training all affected CDCR staff and CalPAP attorneys. The plan must specify associated funding and timelines regarding the implementation process, and any new resources required.

5. By June 15, 2008, these policies and procedures must be implemented.

The Special Master may, in his discretion, grant an extension of time on any of these deadlines upon either party's request and a showing of good cause."

Special Master Activities

Since the filing of the Third Report of the Special Master on the Status of Conditions of the Remedial Order ("Third Report"), concentration remained on the implementation of the Remedial Sanctions plan and a study of telephonic probable cause hearings. A hearing was held on disputed issues concerning confrontation rights. The Special Master's "REPORT AND RECOMMENDATION REGARDING MOTION TO ENFORCE PARAGRAPH 24 OF THE *VALDIVIA* PERMENANT INJUNCTION" was forwarded to the Court and all parties on February 8, 2008.

A 'meet and confer' meeting was held on February 1, 2008 with the following issues briefed and discussed: paragraph 10 (of the Permanent Injunction) issues, and the status of the interim and permanent procedures for dealing with mentally ill parolees, parties' negotiations regarding supplemental charges, negotiations regarding decision review, and the handling of extradition cases.

The Special Master continued to meet with information technology staff to develop compliance reporting mechanisms. The Special Master examined Defendants' self-monitoring methods through discussions, review of self-monitoring reports, and a tour of Los Angeles County Jail, and continued an investigation into telephonic probable cause hearings, entailing additional site visits to Butte, Tehama, Nevada, Placer and Shasta county jails.

Finally, the Special Master observed a planning meeting with a new jail-based In-Custody Drug Treatment Program, met with Defendants to develop the specifications for providing services in community-based drug treatment programs for dually diagnosed parolees, and participated in meet and confers regarding remedial sanctions as well as a

joint meeting of the Division of Addiction and Recovery Services and the Division of Adult Parole Operations ("Paroles Division") with Plaintiffs to discuss the transfer of duties between the divisions.

Scope and Approach for This Report

The first Special Master's report reviewed the many components of the Permanent Injunction and issues arising out of interpreting the requirements in actual practice. The Second Report emphasized, almost exclusively, the subjects of this Court's orders issued during the first Round and two additional topics on which the parties had focused their efforts. The Third Report returned to a more global assessment.

This Report discusses each Permanent Injunction requirement and its status, if known. Unless otherwise noted, data is drawn from the period of September 2007 through January 2008 and observations typically spanned October 2007 through February 2008; collectively, this period will be referred to as "the Round." The report then catalogues additional issues that have arisen during implementation.

This report uses some conventions. Progress and compliance are often discussed separately, reflecting that movement during the Round is worth recognizing, even where overall results may not match. In assessing either, this report uses the terms "resolved," "good," "adequate,' and "poor." At this stage of the remedy, one would expect most requirements to be partially implemented and, thus, "adequate." "Good compliance" is a high bar, and it takes sustained Rounds of "good" compliance to reach "resolved" status. When discussing problems, descriptors progress in severity from "minor" to "substantial" to "significant," and then stronger terms are used for issues of greatest concern. References to the Special Master's activities frequently include the actions of one or

more members of his team. References to "monitoring reports" refer collectively to reports generated by Plaintiffs' monitoring and by Defendants' self-monitoring, unless otherwise specified.

Remedial Sanctions

This report will continue to focus on progress made by Defendants on the elements of the Stipulation and Order Regarding Remedial Sanctions[1] ("Remedial Sanctions Order") that was negotiated between the parties and signed by the Court on April 4, 2007. It is important to note that compliance with this Order is not equivalent to satisfying the remedial sanctions obligations under the Permanent Injunction, but the Remedial Sanctions Order continues to serve as a valuable tool to help Defendants take significant steps toward the overall remedial sanctions requirement of the Permanent Injunction.

Unlike the last report period in which the Defendants made greater progress as the reporting period proceeded, during this period problems have arisen that have slowed progress . Defendants have continued to meet the timeframes and intent of many aspects of the stipulation. There are some notable exceptions, which include the failure to complete and implement the electronic monitoring policy and to provide information to the Special Master and Plaintiffs regarding the use of interim remedial sanctions.

Policies and Procedures

Expanding the pool of parolees eligible for remedial sanctions and approving additional community-based programs as appropriate remedial sanction placements were the central reasons for creating the *Long-Term Memorandum Regarding Remedial Sanctions*, Policy 07-40, issued on September 7, 2007. Likewise, these reasons underlay

the modification of policies for the In Custody and Community-Based Drug Treatment Programs (ICDTP), Residential Multi-Service Center, Parolee Service Center, Female Residential Multi-Service Center, and Electronic In Home Detention.[2] The updated policies and procedures for the first three programs were distributed to all Paroles Division field staff in August and September of 2007.

The electronic monitoring policy was allegedly delayed due to a requirement to negotiate workload impact with labor. While it is true that the policy has issues that require negotiation with labor, the policy had not gone through the required CDCR policy steps until 2008 and notice to the union was just given on February 21, 2008.[3] CDCR failed to complete this policy in a timely fashion. The delayed implementation of the policy has resulted in parole agents working with a narrower eligibility criteria for the program than has been negotiated by the parties. The Female Residential Multi-Service Center policy was issued on January 18, 2008, well past the stipulated date but in advance of the opening of the first facility slated for April 2008.

A key aspect of the long-term memorandum regarding remedial sanctions is the modification of the county-to-county transfer policy. The memorandum clarifies that temporary placement of out-of-county parolees in remedial sanctions is not restricted by the 5% limitation on out-of-county transfers applicable to other parole programs. Defendants have not produced data on the number of out of county transfers that have occurred under the Remedial Sanctions Order. A voice mail instruction reportedly went out to all Deputy Commissioners in January 2008 reminding them that county-to-county transfers are acceptable if approved by a Parole Administrator. There is anecdotal

evidence from Paroles Division administrators that out-of county-transfers are being used.[4]

Evidence from the monitoring tours demonstrates that in some areas of the state, Parole Administrators and Deputy Commissioners do not recognize the possibility that a parolee can go to a remedial sanctions program in another county, opting instead for return to custody when local programs are full. Until Defendants have sufficient placements available in all counties, they should continue to issue reminders and should conduct training regarding the use of inter-county transfers to make remedial sanctions available.

- § Although Defendants made significant progress in revising policies during the third reporting period, the process slowed dramatically for the overdue policy revisions during the fourth reporting period. There is adequate compliance and progress on this item.

Interim Remedial Sanction Placements

Unknown at the last reporting period was the extent to which the interim measures, which were designed to create an immediate remedy for the Defendants' inability to create additional In-Custody Drug Treatment Program beds, were being used. The Paroles Division, the Board of Parole Hearings ("the Board" or BPH), California Parole Advocacy Program (CalPAP), the lawyers representing parolees in revocation proceedings) and relevant contractors had all been informed through Paroles Division Policy 07-40 of the availability of Parolee Service Centers, Residential Multi-Service Centers and Female Residential Multi-Service Centers, Community-Based Coalitions, Day Reporting Centers and Substance Abuse Treatment and Recovery Centers for use as remedial sanctions.[5]

Plaintiffs argue that Defendants have failed because they believe the Order required beds in these programs to be dedicated to remedial sanctions. While the Remedial Sanctions Order only requires that these programs be available for use as remedial sanctions, the intent is clearly one of using these options – the Order specifies that half of the beds in the first three programs be designated for remedial sanctions during this period and does not identify any specific target for availability for the other programs.

The Defendants have created a Residential Multi-Service Center tracking sheet, which includes program capacity, referrals, all placements, and remedial sanction placements.[6] The referral data in the Residential Multi-Service Center tracking sheet appears to conflict with the CDCR database referral data. Because of the ongoing modifications to the main data base, the Special Master will rely on the Paroles Division tracking data.

Preliminary data in the last reporting period indicated that at least the Residential Multi-Service Centers and Parolee Service Centers were receiving remedial sanction placements. Defendants indicated that, using their primary information system, they believed that, from June 17, 2007[7] through October 15, 2007, there had been approximately 108 Parolee Service Center remedial sanctions placements. Likewise, they reported 272 placements for remedial sanctions in Residential Multi-Service Centers from March 24, 2007 to October 15, 2007. Due to challenges with reporting, it was believed that these numbers might have underrepresented actual placements.

From October of 2007 through February of 2008, 1,989 referrals were made to Residential Multi-Service Centers and the average number of people served per month

was 913. The percentage of those served in Residential Multi-Service Centers who are remedial sanction referrals has increased from approximately 14% in October of 2007 to 26% in February of 2008.[8]

No placements have been made to Female Residential Multi-Service Centers. Efforts to contract for Female Residential Multi-Service Centers have failed with the exception of 25 beds that are scheduled to open in Sacramento in early April 2008. The budget of this program has been reduced as has the number of beds that CDCR is attempting to secure. This program is being moved to the female offender program where it is hoped there will be more success in contracting for services.[9]

Remedial sanction placements in Parolee Service Centers appear to be similar to the last Round. For the four-month period of the last Round, 108 remedial sanction placements were made in Parolee Service Centers. In August of 2007, out of a capacity of 840 Parolee Service Center placements, 22, or 6%, were used for remedial sanctions. In December, the numbers were at 35, or 11%, of PSC placements used for remedial sanctions. Assuming that referrals have remained constant and that the monthly placement rate is somewhere between 6% and 11%, the placement rate at Parolee Service Centers appears to be about the same. These assumptions can not be verified because of the lack of a reliable data source.[10]

Policy identified that, in addition, the Community-Based Coalitions, Day Reporting Centers and Substance Abuse Treatment and Recovery Centers may be used as remedial sanctions. It appears that a small number of placements have occurred in these programs. The main database's Remedial Sanction Monthly Workload tracking report indicates that in February of 2008, 135 referrals were made to the Community-Based

Coalition, or 3% of those continued on parole; 58 referrals were made to Day Reporting Centers, or 1% of those continued on parole; and 460 referrals were made in the Substance Abuse Treatment and Recovery Centers, or 10% of those continued on parole.[11] Since no placement data has been provided for the month of February, it is unknown how many of the referrals actually resulted in parolees being placed in programs. Typically, there are fewer placements than referrals. It should also be noted that some parolees may be placed in both residential and non-residential programs at the same time. For example, a parolee placed in a Day Reporting Center as a remedial sanction may be participating in the Substance Abuse Treatment and Recovery Center program as a requirement of day reporting. Therefore, referral and placement numbers may not correlate exactly with number of parolees served and we would expect the placement numbers to be less than the referral numbers.

The use of interim options for remedial sanctions was codified in CDCR policy as agreed to in the stipulated Remedial Sanctions Order. CDCR has not provided timely information regarding the use of the interim options during this reporting period. There are also questions regarding conflicts between data sources. Despite these problems, it appears there has been an increase in the use of Residential Multi-Service Centers as an interim remedial sanction and the use of Parolee Service Centers has remained about the same since the last Round. There is also an indication that a small number of referrals are being made to the Community-Based Coalitions, Day Reporting Centers and Substance Abuse Treatment and Recovery Centers.

- There is adequate progress toward fulfilling this agreement.

Expanding Jail and Community-Based ICDTP Programs

In contrast to the interim remedial sanctions, progress continues to be made on the development of both jail and community-based ICDTP programs. The Remedial Sanctions Order indicates that by April 1, 2008, there must be a 1,800 ICDTP beds accepting parolees. Despite repeated efforts, CDCR has had difficulty securing jail-based ICDTP beds. It became clear that the likelihood that the jail-based model could expand to 1,800 beds was negligible. CDCR proposed the development of a community-based version of ICDTP. This model incorporates aspects of the former Substance Abuse Treatment Control Units and the jail-based ICDTP programs.

Working through the Division of Addiction and Recovery Services, in August of 2007, Defendants were able to secure a non-competitive bid contract with Substance Abuse Services Coordination Agency providers to develop 1,150 community-based ICDTP beds. The Division of Addiction and Recovery Services had confirmed that the existing Substance Abuse Services Coordination Agency providers which already provided the thirty day community-based component of the jail-based ICDTP had some additional capacity to provide a longer, 90-day program. The providers had some ability in their existing programs to not only provide this program but believed that a longer community-based program was more consistent with current knowledge regarding treatment efficacy. The Division of Addiction and Recovery Services recognized that there was not capacity to provide all of the proposed 1,150 beds but believed that the providers could expand and add the capacity to meet this demand by the April 1, 2008, the deadline of the Remedial Sanctions Order.

In addition, Defendants agreed to increase the total number of jail-based ICDTP beds to 650. The Division of Addiction and Recovery Services was responsible for identifying and contracting for the community-based ICDTP beds and the Paroles Division would identify and contract for the increase in jail-based ICDTP beds. The Paroles Division was responsible for placement and monitoring of parolees while in the programs.[12] Initially, this division of labor seemed to work well.

The Division of Addiction and Recovery Services had success getting the regional agencies to subcontract with their providers to provide community-based beds and secured 600 beds in the Los Angeles area of Region III. Both the Special Master and Plaintiffs were assured that this meant there were 600 beds available the first day of placement, which was September 17, 2007.[13] Initially, referrals were slow and there were only 44 placements by the end of October. The Paroles Division indicated that it typically takes three weeks for referrals to move through the system and approximately 120 days to fill a program, but they provided additional training and support to the Los Angeles region, which resulted in a steady flow of referrals. However, placements continued to be slow and, by November, only 176 placements had been made.

It was then discovered that a significant percentage of referrals being made by Unit Supervisors and Parole Administrators were being rejected by the Board. The Paroles Division and the Board worked together to ensure that Deputy Commissioners understood the program and the less restrictive exclusionary criteria. Referrals, which had averaged 270 for the months of August and September, increased to 561 in October. Both referrals and placements continued to increase in Los Angeles at a steady and consistent rate and, by the end of December, placements had reached 311.

On January 23, 2008, Plaintiffs notified the Defendants and the Special Master of a disturbing finding from monitoring activities at Pitchess Detention Center. They discovered that while there was an increase in placements by Deputy Commissioners, there was a breakdown in the transportation of parolees from the county jail to the ICDTP programs. Some of the parolees who were interviewed had waited up to 33 days for transfer.[14] Upon further investigation, Defendants discovered 104 parolees who were awaiting transfer to ICDTP from Pitchess Detention Center. This problem resulted in the surfacing of yet another challenge. CDCR had decided to transfer responsibility for ICDTP from the Paroles Division to the Division of Addiction and Recovery Services, which resulted in organizational confusion and, in part, accounted for the back-up at Pitchess Detention Center. Defendants moved quickly to solve the transportation problem and to transfer and place the parolees in ICDTP community-based beds. By the end of January, 420 parolees had been placed in the Los Angeles community-based ICDTP programs.

In February, another back log developed at Pitchess Detention Center. Initial reports of the back log were estimated to be as high as 217 parolees, but upon examination, it became clear that 55 were duplicate names. Sixty-seven parolees were transferred by February 22, 2008. An additional 33 community-ICDTP beds opened and by the end of the month, the back log was reduced to 67 and arrangements were made for transfer within the first week of March.[15]

There continue to be problems getting parolees transferred expeditiously from Pitchess Detention Center to the ICDTP community-based programs. There are also preliminary indicators that this problem might exist in other Regions[16]. While it is not

clear what the reason for these problems are, the back-up appears to be in part a result of problems inherent in the process of transferring responsibility from the Paroles Division to the Division of Addiction and Recovery Services, but also may be an artifact of the change in the exclusionary criteria. A criterion has been changed to remove the existence of local charges as an automatic exclusion for program qualification. In some cases, parolees are being approved for ICDTP but the local charges are prohibiting transfer. The Division of Addiction and Recovery Services and the Paroles Division are working to find a solution to this problem.[17] Both divisions are to be commended for their willingness to explore this problem and not to resort immediately to narrowing the eligibility for the program by eliminating parolees with local charges.

The root cause of the delay in transferring parolees expeditiously is unclear. No matter what the cause of the delay in transporting parolees to ICDTP, once this issue becomes known to parolees, it could impact their desire to enter the program.

Another issue of greater concern in getting parolees transferred quickly is what appears to be a bed capacity issue in the Los Angeles area. While Defendants represent that there were 600 beds available in Los Angeles on September 17, 2007, since the contract is fee for services, those beds not filled immediately by ICDTP referrals are filled by other vendors. At this point, the problem of access seems primarily to be in the Los Angeles area of Region III, and in part of Region IV.

Concurrent with the expansion of the Los Angeles community-based ICDTP has been expansion of other jail-based ICDTPs and community-based ICDTPs in other regions throughout the state. The month of October began with a statewide capacity of 258 jail-based ICDTP beds that had consistently high occupancy rates. By November,

increases at existing jail-based ICDTPs in Kern, Tulare and Del Norte counties, as well as the additions of jail-based programs in Merced and Orange counties, increased capacity to 560.[18] In addition, the requirement to have a minimum of 30 female beds in Orange County was met. With the exception of Orange County, the additional beds were quickly filled. Orange County has continued to move slowly but steadily, having achieved 58 placements by the end of February.

Unfortunately the San Francisco County Jail, which housed a 30-bed female jail-based ICDTP, had to eliminate the program because of local capacity issues. The Division of Addiction and Recovery Services and the Paroles Division moved quickly to replace these beds with a community-based option in November. Similarly, an agreed upon increase of 60 beds in the jail-based Santa Clara program was withdrawn because of local capacity issues.[19]

By the end of December, statewide referrals to ICDTP had risen to 637 per month and the target in the Remedial Sanction Order of an additional 200 beds in the state was met by the opening of 150 community-based beds in the Bay Area and 58 community-based beds in San Bernardino. The latter site was considered a great victory since Region IV resisted not just ICDTP programs but other programs such as Day Reporting Centers and Residential Multi-Service Centers.

Plaintiffs were scheduled in late February for a monitoring tour in Region IV and requested to visit some of the San Bernardino community-based ICDTP programs. They discovered that only one placement had been made in San Bernardino. While it typically takes approximately three weeks to get referrals into programs, this process was clearly not working well. In exploring the issue, it became clear that the Division of Addiction

and Recovery Services had not engaged in the type of activities that the Paroles Division had found to be useful when opening new programs.[20] This was another indicator of transition problems between Division of Addiction and Recovery Services and the Paroles Division.

In mid-March, Plaintiffs visited community-based ICDTP programs: Volunteers of America, Sobriety House and Affirmation House in Region IV. These facilities had been listed by Defendants as having together a total of 44 ICDTP beds. However, one had not yet had a single parolee placed there because it is generally at capacity, and the other had only received six parolees because it typically is at capacity[21]. This monitoring visit raises concerns regarding whether the number of beds that Defendants have suggested are available for remedial sanction parolees is credible.

Since the ICDTP community-based programs contract is not for dedicated beds, parolees have to wait until beds become available before they can be transferred. Plaintiffs argue that, absent dedicated beds, the full 1,150 should not be considered "available beds." The Special Master believes this type of contract is not a problem unless the waits are excessive or usage reflects that parolees need these beds but cannot access them. The question of whether there is enough capacity in the Substance Abuse Services Coordination Agency system to accommodate 1,150 parolees at the same point in time has not been satisfactorily answered. Both the lag time in parolees moving into ICDTP and the questions regarding the actual community-based program capacity will be a focus for monitoring in the next round.

Unfortunately, the transition process of ICDTP programs from the Paroles Division to the Division of Addiction and Recovery Services has not been well planned.

Responsibilities were transferred to Division of Addiction and Recovery Services before needed staff was hired and trained. Defendants have moved to remedy this situation by creating a formal transition process led by a joint Paroles Division and Division of Addiction and Recovery Services committee.[22] The CDCR Undersecretary for Programs met with the Special Master and Plaintiffs on February 28, 2008 and committed to finding a resolution to the transition problems. Given the successful track record of the Division of Addiction and Recovery Services and Paroles Division collaboration to this point, the Special Master hopes the Defendants will quickly remedy the transition issues so the prior progress in meeting the requirements of the Remedial Sanctions Order can continue.

The limited access to community-based beds in the Los Angeles region and the slow start up in San Bernardino raised serious questions for Plaintiffs regarding whether, in fact, the bed capacity that is contracted for translates to actual beds. With no monitoring visits of the community-based ICDTP programs having been completed, Plaintiffs questioned if the programs existed. To that end, the Special Master and the Plaintiffs met with the Defendants on February 28. Defendants shared the location of all community-based programs and the names and dates of referral and placement of all parolees placed in the programs as remedial sanctions.[23] While this was reassuring, the Plaintiffs and the Special Master continue to have concerns about the actual capacity of the community-based ICDTP program.

In mid-February, 118 community-based ICDTP beds opened in San Diego, 54 in Riverside, and 60 in Orange County. By the end of February, San Diego had made one remedial sanction placement and Riverside had three.[24] Table 1 shows the numbers of

referrals and new placements made each month statewide for the reporting period. Table 2 compares the beds required by the Remedial Sanctions Order to the number of jail and community-based beds available each month and the total number of placements made, as well as the occupancy rate. As expected, occupancy rates fluctuate with the addition of new beds but total placements continue to rise each month.

Table 1[25]

Month	Number of Referrals	Number of New Placements
September 07	262	148
October 07	561	165
November 07	655	308
December 07	637	454
January 08	738	458
February 08	738	590

Table 2

Month	Beds Required by the Order	Number of Jail-Based Beds Available	Number of Community-Based Beds Available	Total Jail and Community-Based Beds Available	Total Participants[26]	Percent of Beds Occupied
September 07	438	273	600	873	283	32
October 07	438	273	600	873	290	33
November 07	952	558	600	1158	484	42
December 07	952	558	630	1188	709	61

January 08	1152	558	870	1428	860	64
February 08	1352	528	1040[27]	1568	928	59

Assuming that there are actual beds that match the contracted number in each region, Defendants have a total of 1,568 ICDTP jail and community-based beds. This exceeds, by 222 beds, the target of 1,352 beds slated to be operational by February 15, 2008 in the Remedial Sanctions Order. Statewide referrals for February increased to 738. The Defendants are to be commended for their continued efforts to open and fill ICDTP programs. To verify if Defendants have actually met or exceeded the targets of the Remedial Sanctions Order will require field visits and better data collection. Their success has created new challenges, which include a back log of referrals in the Los Angeles area. Fortunately, Defendants have been working on a decision-making matrix that should help with this most welcome dilemma.

- There is good progress on this requirement.

Creating ICDTP Options for the Dually Diagnosed Parolees

The Remedial Sanctions Order requires Defendants to "make every effort to secure 20 beds in each region targeting the needs of parolees with dual diagnoses of mental illness and substance abuse." The Defendants have been successful in identifying far more than 20 community-based ICDTP beds in each region.[28] The actual availability of these beds has not yet been verified in the field and there is no information regarding how many dually diagnosed parolees have been referred to or actually placed in the community-based ICDTP programs. The Special Master met with Defendants to refine

proposed criteria created by Division of Addiction and Recovery Services. The revised draft was reviewed with Plaintiffs at a December 7, 2007 "meet and confer". The criteria creates specifications identifying the specific services a community-based ICDTP must provide to qualify to serve dually diagnosed parolees.[29] Further work is needed to refine the exact capacity of each program.

- There is adequate progress on this requirement.

Accommodating Parolees with Disabilities

The parties have worked toward providing remedial sanctions to parolees with disabilities that are the same or equivalent to remedial sanctions available to parolees without disabilities. In August of 2007, Plaintiffs expressed concern over what they believe is inadequate language and response regarding access to remedial sanctions for parolees with disabilities.[30] Defendants responded to the Plaintiffs on August 10, 2007 and indicated that they felt the ADA language included in the long-term memorandum was sufficient. Plaintiffs disagreed again in writing and in a conference call with the Special Master on September 28, 2007. Defendants were slow to respond on this issue but agreed at the December 7, 2007 meet and confer to develop detailed policies and procedures by the first of February 2008. Draft policies and procedures were presented at the February 27 meet and confer.[31] Plaintiffs are providing feedback and Defendants are refining the policies and procedures.

- There is adequate progress on this requirement.

Electronic In Home Detention (EID)

The parties agreed in the Remedial Sanctions Order that: "…by May 1, 2007, Defendants shall have 500 [Electronic In Home Detention] units operational, with 250 of these units dedicated to use as remedial sanctions, and the remaining 250 available for use either in parole supervision or remedial sanctions.**"** As with the last reporting period, the Defendants continue to exceed this requirement. As demonstrated by Table 3, the Defendants have consistently exceeded the goal of having more than 250 units in use for remedial sanctions for seven consecutive months. In addition, beginning in February, Defendants have added capacity in their data system to track the monthly referrals by region.[32] One hundred fifty seven referrals were made in the month of February.

Table 3

	June	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**	**Jan**
Region I	62	85	96	82	88	90	88	89
Region II	56	88	93	97	95	101	101	100
Region III	25	37	37	49	38	35	72	63
Region IV	34	61	62	50	45	51	74	87
Total Remedial Sanctions	177	271	288	278	266	277	335	339

The parties disagree regarding when the use of electronic monitoring constitutes a valid remedial sanction. Defendants indicate that electronic monitoring is being used in cases when a parole violation report is filed with the Board and in cases to avoid the filing of a parole violation report. Plaintiffs contend that if the parole violation would not ordinarily result in a return to custody, placing the individual on electronic monitoring

should not be considered a remedial sanction. It is not possible to determine from the information provided by Defendants how many of the units are be used under each of the two circumstances. More information is needed to address this question.

The division reportedly purchased newer units that are easier to administer and trained staff on their use during the Round.[33]

- § There is adequate compliance with this requirement.

Decision Matrix

As noted previously, it could be argued that this type of policy making, which restructures how decisions regarding parole violations are made, is beyond the scope of the Permanent Injunction and yet, the Defendants suggested that this process be included in the Remedial Sanctions Order, demonstrating their true interest in system reform, not just complying with the legal mandates of the Permanent Injunction. Despite the difficulty of this type of system reform, Defendants have continued their work with the Center for Effective Public Policy to create a risk assessment tool and a violation matrix. The purposes of the decision matrix are to:

- ü Eliminate some violations from ever occurring by reducing unnecessary parole conditions.
- ü Anticipate failure, and be proactive in managing the parolee. When violations do occur, respond immediately.
- ü Empower front line staff to resolve violations quickly.
- ü Consider the parolee's risk, severity of the violation, and the overall objectives of the case plan in responding to violations.

- ü Use guidelines that help staff to be consistent and proportional in their responses to violations.

A leadership group from the Paroles Division and the Board has been established that has:

1. Conducted a series of focus groups with staff from all levels of the organization and several parts of the state,
2. Developed a system map,
3. Analyzed current policy and processes,
4. Discussed the goals, values, and purposes of modifying the approach to violations, and
5. Created an initial draft of documents and tools to support a modified process that will be field tested beginning in May.

Defendants are facing new challenges such as waiting lists for some ICDTP programs. Part of the solution to such a welcome challenge will be using a decision matrix that encourages staff to use the broadest array of appropriate program options for parolees. The consultant group gave a detailed presentation on the project to the Special Master, Plaintiffs and CDCR staff in March 2008.

- § There is good progress on this issue.

Consideration of Remedial Sanctions at Each Step

The Special Master observes that this has been a great area of focus for Defendants in 2007 and 2008. It is frequently mentioned in trainings, self-monitoring visits, and supervision. Some data system changes aimed at documenting consideration

have been rolled out earlier than other changes, and more are anticipated. As programs were made available for remedial sanctions, supervisory staff often made a concerted effort to educate staff about the programs and policy changes.[34]

Practice changes were evident during observations in the field, as well as in the referral and placement numbers described above.[35] In eight site visits to six institutions during the Round, the parties and the Special Master noted that Deputy Commissioners discussed remedial sanctions in some detail with parolees, and often carried forward recommendations or initiated placements. Among at least seven Deputy Commissioners observed, only one said he relied on prior staff's recommendations and did not make an independent assessment. There were some good practices in some locations to distribute information about bed availability and the Special Master observed some Deputy Commissioners calling during hearings to determine availability.

Documentation, however, continued not to capture consideration nearly as often. It was not reflected in a large majority of the cases the parties monitored at the disposition offer stage, at probable cause hearings, and at revocation hearings.[36] Data reports suggested the need for continued education and information availability in that a growing number of hearings were repeated because of incorrect judgments about eligibility or because placements could not be effected for lack of beds.[37]

§ There is adequate performance on this requirement and good progress.

Future Issues

Some progress has been made since the last reporting period regarding future issues. The critical issues that are unresolved center on whether and to what degree the issues below are within the scope of the case:

- § Which programs satisfy this Court's requirements for self-help outpatient/aftercare programs, and those providing a structured and supervised environment,
- § What response is required for specialized populations of parolees such as women and mentally ill or disabled parolees, and
- § What are the elements of a compliance measurement system that tracks remedial sanction consideration at each decisionmaking step in the parole revocation process.

The progress that has been made regarding what response is required for specialized populations like women, mentally ill and disabled parolees includes:

- ü The required number of beds for each region for women parolees has been met or exceeded in each region.
- ü There are now draft criteria for required services for dually diagnosed parolees.
- ü Plaintiffs drafted monitoring criteria for the community-based ICDTP programs, which address, among other issues, the issue of equal access for specialized populations. It is possible that this monitoring criteria has some of the elements of a compliance measurement system.

A final area that is worthy of note is improvement in the working relationship between the Board and the Paroles Division. The two divisions are collaboratively leading efforts such as the decision matrix. There has been a recent change in leadership with a new Executive Director of the Board.

Mentally Ill Parolees

In January 2008, this Court ordered Defendants to prepare plans for providing due process to parolees unable to participate in revocation proceedings by virtue of their mental illness. The orders, detailed above, encompass a schedule for developing policies and procedures, reporting on progress, and implementing the plan.

While the overall issue of managing this population remains problematic, Defendants have complied with this Order to date, providing timely information according to the Court-ordered schedule. Staff have taken at least five very different approaches to this issue in 2007 and 2008; several were described as near completion when Defendants chose to reformulate major components. While plan components are certainly within Defendants' discretion, such changes carry the risk of necessary features not being carried forward, ramifications of new components on other components not being anticipated, and delays attendant to working this through. The most recent of these changes occurred two weeks before the Court-ordered deadline for a full implementation plan and is largely unformed as of this writing.[38] Plaintiffs have expressed particular concern about the absence of treatment focus in the progress updates and plan descriptions during the Round.

A developed plan was first provided to Plaintiffs on April 3, the date the Court ordered for providing a full implementation plan. Plaintiffs object in that they expected to

help shape the plan as it developed. This is based in an ongoing disagreement concerning the language and intent of the Permanent Injunction's requirement that "all policies, procedures, forms and plans developed under this Order" be shared in draft form. This disagreement merits attention by the Special Master and the parties.

Ensuring that class members have access to Department of Mental Health care will be a critical component of the plan. The Special Master has been clear in his expectations, at least since his Second Report, that all involved agencies must address this issue. Defendants have represented, since August 2007, that an agreement on-point was imminent. Recent developments indicate much more work remains.[39] The Special Master expects to see Defendants' commitment fulfilled in the very near future.

In the meantime, Defendants have been responsible for suspending proceedings and referring this population to treatment, monitoring ability to meaningfully participate, and returning parolees to hearings as soon as their conditions allow. Defendants tracked these efforts and improved the timeliness of providing this information. Proceedings have been suspended on just over 180 occasions in the 13 months this interim procedure has been in place.[40] Tracking suggests Defendants' staff and jails are becoming more familiar with referrals to treatment and exchanging information about parolees. During tours, all parties assessed staff's awareness of these procedures with favorable results.[41]

Monitoring parolees' condition and returning them to hearings has not fared as well. A small number of cases were not tracked, were included in tracking only months after an initiating event, or were dropped. Some cases do not document monitoring checks for intervals ranging from three weeks to three months, unacceptable periods when parolees are being held without a hearing.

Reportedly, it became increasingly difficult for the Board's staff to obtain clinical information or review of these parolees' conditions. It is problematic that this situation was known but not reported to the Special Master for months. Defendants believe they did provide this information in early February, but Plaintiffs counsel and the Special Master do not recall this.

Under these circumstances, many parolees were returned to hearing with no clinical assessment, though attorneys and Deputy Commissioners jointly applied their judgment as to whether the parolees were capable of participating. In a smaller set, however, the hearing record did not document any such discussion, which raises concerns about the judgment to go forward. Once a decision was made, some cases took three to four weeks to be placed on calendar. These cases may have been partially explained by the length of time needed to subpoena witnesses for revocation hearing, but the times appear unnecessarily extended despite that. Although the problems associated with these parolees were recorded, there was no apparent follow-up by those tracking or reviewing the logs. Each of these deficiencies impacts due process, and Defendants must take immediate steps to address them; this can no longer be held in abeyance for the anticipated policy changes. Defendants agreed, on March 12, 2008, to adopt an interim policy addressing several of these issues.

Tracking and the parties' monitoring reports also revealed rare occurrences of lengthy rescheduling times for postponed hearings and giving credit for time served – an action that assumes there has been a parole violation – when there has been no hearing. These issues merit attention as well.

- Although the issues in handling this population are complex and extremely difficult, and there have been well-intentioned efforts to develop and carry out

> viable protections, failures of coordination and sustained effort have undermined both planning and necessary assurances of due process in the meantime. Progress has been limited and compliance is poor.

Information Systems

This Court ordered in November 2006 that Defendants initiate information system changes aimed at accurately demonstrating compliance, and periodically report on their efforts. The relevant portion read:

> Because of the critical need to structure compliance activities, demonstrate compliance, and exercise effective internal oversight, Defendants must provide additional resources to make information system application changes for the purposes of data collection, analysis, aggregation, and management reports, and other modifications as needed by the Special Master and the Court, with input from Plaintiffs. The effort should be coordinated with the information system changes underway pursuant to the *Armstrong* court's order, to avoid unnecessarily duplicative or contradictory effort, and so that the changes serve the purposes of both remedial plans on the issues they have in common. To the extent that DAPO and BPH determine that certain of these functions can best be accomplished by modifying DAPO's information system, sufficient resources must also be available for that purpose. Major modifications will be needed in RSTS and likely in other databases.
>
> Planning for these changes must be initiated within 60 days of this order. Defendants must provide to the Special Master and Plaintiffs periodic reports on the progress of these changes; the first of these should be due six months after the date of this order, and every six months thereafter until the Special Master determines the improvements are complete The system changes must be completed within two years of this order.

In prior Rounds, Defendants acquired funding and contracted for services to accomplish this project, as well as gathering input as to necessary components from computer system users in different divisions, Plaintiffs, and the Special Master.

Defendants' documents indicate that the project has taken substantial steps. During the Round, Defendants and their contractors reportedly completed the project

management schedule and plan, conducted weekly status meetings, developed a systems requirements document, and completed many components of the design and application changes. It appears that each of the components scheduled for delivery before March 2008 has been completed. The design of the testing instruments and the training materials has begun.[42]

- There is good progress toward fulfilling the Court's order and good compliace with it.

Self-monitoring

This Court also ordered in November 2006 that Defendants institute and maintain the infrastructure needed for self-monitoring. The order read in relevant part:

> To establish and demonstrate the state's ability to fully assume responsibility for overseeing *Valdivia* policies and procedures long-term, the state must institute and maintain the infrastructure needed for self-monitoring, staffed by subject matter experts working in a department outside of the departments being reviewed. There must be staffing and resources sufficient to conduct site visits, assessments, and quality improvement efforts at the Decentralized Revocation Units, contracted jail facilities, contracted legal services for parolees, CDCR and non-CDCR facilities providing remedial sanctions, and other facilities and services falling under the auspices of the *Valdivia* remedies.

Defendants have made very good progress in this area. The unit has been allocated 15 positions and operates as an independent unit, a critical feature of the court's order. Many positions are filled, but both Deputy Commissioners and Classification Counselor IIs are running with only half of their positions filled.[43]

Staff have substantially expanded their self-monitoring efforts and enhanced them with principles of scientific validity. Staff now review a reasonable-sized sample of completed cases (generally 10%), chosen by valid method, for all *Valdivia* timeframe

requirements prior to a self-monitoring visit. The size of the sample provides more valid results, and the timing prepares the team to effectively tailor onsite monitoring to known problems or to gaps in knowledge. It is clear that staff also review prior Plaintiffs' reports and incorporate those concerns into onsite reviews.[44]

Staff's self-monitoring reports contain well-focused analysis. They correctly identify deficiencies in both procedural and due process aspects, while maintaining a balanced tone best designed to generate staff participation in creating necessary changes. Indeed, monitoring staff describe intelligent new measures aimed at developing these partnerships, including additional visits to build alliances and to interview local staff to determine their ideas of the problems and potential solutions. Similarly, reports now distinguish smaller issues needing attention from more substantial issues requiring corrective action.[45]

Plans for follow-up are partially developed.[46] When unexpected problems surface during site visits or interviews, monitoring staff describe quickly generating plans to investigate the causes, scope, and solutions. They have begun synthesizing the items needing corrective action and distributing these summaries in multiple ways: to facility or regional administration on a shortened schedule, to division leaders, and as a report attachment. Staff have not yet established mechanisms for overseeing whether corrective actions have taken place. This is complicated by there being no reporting lines to the self-monitoring unit. CDCR must determine how to address this, and any other barriers, for the unit to be effective in remedying deficiencies.

The self-monitoring unit also undertakes targeted interventions to investigate the scope of a suspected problem or to address known problems with a particular practice or

in a specific location. It has continued long-term efforts to establish better tracking and handling of revocation extension proceedings through monthly conference calls with involved staff throughout the state, and distributing corrective information when it appears multiple sites would benefit. The unit investigated the timeliness of proceedings for parolees returned from out of state, identifying the issues, attempting remedies, measuring outcomes, and appropriately adjusting remedies in response. Similarly, the Special Master understands, the unit is looking into potential deficiencies in the use of the disability-related database. When patterns of problems were apparent during the team's preparation for a self-monitoring visit of Los Angeles County Jail, staff made additional visits at regular intervals to begin to identify causes and to build the relationships necessary to address them.

This rigorous analysis, problem-solving approach, and information distribution are exactly the foundation CDCR needs to reach substantial compliance and to demonstrate that it can maintain constitutional systems on its own. As staff have been in place only since Fall 2007, they have reached only a few institutions and a few issues; it is critical that these methods be applied across the system to develop solid information about how the system is operating and what it needs to come into compliance. CDCR must continue to work to ensure that information representative of the whole system is generated, and that there are mechanisms to ensure that field staff and headquarters staff learn the results of monitoring, work together to follow through on identified problems, and oversee their being addressed.

§ There is adequate compliance and good progress on this requirement.

Permanent Injunction Requirements

Defendants continued to manage a high volume of revocation actions, including sharp spikes during the first and last months of this Round. The following averages take into account open and closed cases.[47]

- On average, unit supervisors and parole agents conferred concerning 11,588 parole holds each month, an average similar to the prior Round despite the spikes.

- On average, Board staff completed 7,312 probable cause hearings each month, with another 1,300 generally pending. This appears to be a higher amount of hearings, but this may just be a product of greater clarity about open cases.

- On average, Board staff completed 1,484 revocation hearings each month, somewhat fewer than in the past, and another 900 or so were pending.

In several measurements below, timeliness percentages in known cases remained steady, to Defendants' credit, as the same number of staff were able to maintain those percentages while handling this higher number of cases.

As detailed in earlier reports of the Special Master, some of Defendants' and CalPAP's information system reports have been structured to exclude certain categories of cases. With some categories, the timing requirements differ from typical cases and the information system does not capture all dates necessary to calculate the appropriate timeliness (most typically, these are extradition cases and optional waiver activations).[48] With other categories, timing requirements are not agreed upon as of this writing (most typically not in custody hearings and cases with supplemental charges).

Among these categories, cases may or may not be timely according to their unique circumstances. While appropriate to treat these cases differently, the excluded cases are not accounted for elsewhere. Since timeliness cannot be discerned without

unreasonable effort, these cases are collectively referred to as "Unknown" in the Special Master's reports. Information system changes planned for May 2008 are expected to provide more information on these cases in the future.

Meet periodically regarding policies, forms, and plans; submit policies and procedures to the court no later than July 1, 2004 with full implementation by July 1, 2005
Complete implementation of policies and procedures by July 1, 2005

The parties report they continued to meet concerning policies and procedures. Topics undertaken during the Round included not-in-custody hearings, accommodating disabilities in remedial sanctions, revocation extension, and review of Parole Outpatient Clinic files. Internally, Defendants also worked on policies for decision review, fearful witness testimony, and mentally ill parolees unable to meaningfully participate in proceedings. The greatest strides appear to have been in revocation extension.[49]

Defendants undertook to identify the policies remaining to be negotiated, including positions taken to date and the status of negotiations.[50] The list is long, and will need input from Plaintiffs, but this is an important foundation for keeping the parties' efforts moving forward.

§ There is adequate progress and compliance on this requirement.

Appoint counsel for all parolees by Return to Custody Assessment (RTCA) stage of revocation hearing

CalPAP has administered the panel of attorneys representing parolees since the *Valdivia* Remedial Plan's inception. The contract for services is in effect until July 1, 2008. During the Round, the contract for services after that date was put out to bid. CalPAP was awarded that contract. Defendants report they are currently following the statutorily required approval process.[51]

The timeliness of attorney appointment relies on notifying CalPAP of cases, providing materials needed for a defense, notifying CalPAP of hearing dates, and providing an offer related to disposition ("RTCA offer"). There are several measures of this that do not correspond, but each shows moderate compliance similar to the preceding Round.

CalPAP first measures the timeliness of receiving packets; during this Round, 91% were provided timely (though another 4% are unknown).[52] Stated differently, one can only verify that 87% of packets were provided timely; the remainder may or may not have been timely.[53]

Since notice of hearing dates can be separate, CalPAP also tracks "add-ons," which it defines as cases in which it has two days' notice of the hearing date or less; Defendants disagree with this definition. Based on a random sample using appropriate methodology, CalPAP determined that it receives timely notice of hearing dates in 92% of cases. This is a much better rate than reported in the last Round; the Special Master does not know whether this results from improved practices or the more representative methodology employed in this reporting cycle.[54]

While add-ons are apparent throughout the state, they are heavily concentrated in some locations. Most show add-on rates in single digits, but frequency is much higher in both absolute numbers and percentages at facilities associated with CalPAP's offices in Larkspur, Los Angeles, Madera, and Santa Clarita. The Wasco decentralized revocation unit has a similarly high number. California Institution for Men, on the other hand, has an impressively low rate of 3%, especially given its high volume of cases, and Rio Cosumnes Correctional Center seems most improved. Anecdotally, some staff and

CalPAP attorneys note occasions when attorneys are scheduled to represent clients for whom they have no prior knowledge; the Special Master observed two such occurrences during a recent site visit.

In some locations, provision of incomplete packets threatens to hamper effective legal defense and hearing operations. In Los Angeles County Jail, for example, Defendants' staff indicate the rate of incomplete packets can be as high as 18%; self-monitoring staff have undertaken multiple visits to investigate and address the causes.[55] Self-monitoring teams routinely assess this issue at various sites and have found, to date, several forms missing at a low rate, but a fairly high frequency of missing parolee witness lists and conditions of parole forms.[56] In the prior Round's monitoring of parole units, Plaintiffs also found a high rate of the conditions of parole form being present but missing known accommodation information.[57] CalPAP staff have identified a substantial rate of missing disability-related information, as well.[58]

- On balance, there is good compliance on this requirement, and progress showed no changes during the Round.

Defendants shall develop training, standards, and guidelines for state appointed counsel

No new information came to the Special Master's attention through observation or information from the parties.

If the hold is continued, the parolee will be served actual notice of rights, with a factual summary and written notice of rights, within 3 business days

To complete service, notice agents are required to check the disability database and hard copy files for indications of need for extra measures to ensure effective communication or other reasonable accommodations. Notice agents are to provide any

needed accommodations during service, conduct and record an independent review of such needs, and provide and review with the parolee written notice of the alleged charges and his rights in the revocation process. Monitors found that notice agents observed during the Round conducted ADA reviews reasonably and were thorough in their explanations and efforts to ensure parolee understanding.[59] The rare exception on one or two components did not rise to a pattern. Monitors did not consistently assess whether the notice agents checked the disability database. Staff continued to conduct service in a variety of settings, some well-suited and others decidedly not. Defendants reportedly addressed the prior practice of going cellside at California Institution for Men, moving service to a more appropriate area.[60] Several spaces at Los Angeles County Jail are poor. Staff have proposed a partial remedy by using the attorney visiting area, an excellent idea worth pursuing.[61]

As discussed in earlier reports, a complete picture of service timeliness is not currently possible, but data maintained by CalPAP presents a very large, reliable sample. It shows that service was timely at a rate identical to the last Round:

Timely notice:	90% of the known cases[62]
Unknown:	$\geq$6%

Stated differently, one can only verify that 85% of notice service was timely; the remainder may or may not have been timely.[63]

The facilities associated with the CalPAP office in San Diego consistently had the best record, with compliance percentages in the 96 to 98 percent range and a substantial volume. Los Angeles County Jail and Pitchess Detention Center had the lowest

compliance, with percentages typically in the mid-80s. This data does not capture whether the noncompliant cases were served close to the deadline or distant from it.

Monitors also conducted studies of notice timeliness as part of their tours. Sample sizes and selection were increasingly reliable during the Round. Collectively, they demonstrated a 96% compliance rate for timely service.[64] Only a few late serves were measured, but those were found to be one to two days late. It was not possible to use CDCR's data system to determine on a larger scale the degree to which cases were late.

Defendants' data showed substantial improvement in the number of serves that were never completed. This number was reduced in half from the last Round, returning to the rate observed in early 2007 -- an average of 90 people per month were not served notice of their charges.[65] This occurred at nearly every DRU, but by far, the greatest number of cases were at Los Angeles County Jail and California Institution for Men.

Also of concern is whether notices are sufficient to adequately prepare a defense. In this regard, two issues have surfaced: the factual summary of the conduct underlying the violations charged, and the addition of charges after the notice has been served.

The parties have examined the adequacy of the factual summary in the notice during monitoring tours dating back at least to 2006. Small sample size and snapshot methodology have made it difficult to draw conclusions; however, recent self-monitoring has begun to employ random sampling method of adequate size. Aggregate numbers suggest that the factual summaries are insufficient in about 19% of the cases.[66] Further monitoring will be necessary to determine valid percentages, but this indicates a substantial due process problem.

Likewise, the parties have examined supplemental charges. Results of recent monitoring are remarkably consistent with the aggregate results of earlier periods; charges are apparently added after service about 43% of the time.[67] Monitors repeatedly determine that, in at least some of the cases, the facts underlying additional charges were available when the notice was written, though the frequency of this occurrence has not been recorded as consistently. Thus, this has the potential to be a substantial problem if it unreasonably interferes with preparing a defense.

Important, related facts are as yet unknown and should be determined to ensure that due process is being met. Defendants assert that these charges most often are included in the material provided to the appointed attorneys. The parties dispute whether service on the attorney, rather than the parolee, is sufficient for due process. Assuming *arguendo* that it can be sufficient, there are questions as to whether the timing of the file reaching the attorney and the attorney meeting with the client provides adequate opportunity to prepare to defend against charges previously unknown to the client. It is also unknown what proportion of charges are added on this intended timeline, and how many are served later; this raises dual concerns of adequate time to prepare and the permissibility of a policy allowing a supplemental hearing rather than providing finality by the 35th day specified in the Permanent Injunction. These questions will need to be addressed as the parties work toward compliance.

§ There is adequate performance on this requirement; progress is unchanged.

Counsel shall have timely access to all non-confidential reports, documents, and field files

Policies were distributed during the last Round, and the parties have begun monitoring implementation as part of their site visits. Parole unit staff generally report few requests or none. Some staff describe the policy accurately. CalPAP attorneys say some Paroles Division staff seem unfamiliar with the policy and initially reluctant to comply with requests, but they do provide files after consulting with other staff. One recent report discovered incorrect beliefs about the policy that would unnecessarily limit access, if applied. The Special Master is not aware of any reports of inappropriate denials of access and CalPAP reports that they are extremely rare.[68] Plaintiffs assert that more rigorous tracking is called for.

- As the policies are relatively new, some lack of familiarity is to be expected. As Defendants are exercising oversight and reportedly correcting misinformation, there is adequate progress and compliance on this issue.

Parolee's counsel shall have the ability to subpoena and present witnesses and evidence under the same terms as the State

Defendants have revised policies to require Deputy Commissioners to document the reasons if they deny a parolee's requested witness. It is unclear whether staff have been informed of this mandate. No other relevant information came to the Special Master's attention during this Round.[69]

- There is adequate performance on this requirement.

Hearsay evidence must be limited by parolees' confrontation rights under controlling law. Defendants are to preserve this balance in hearings and to provide case law-based guidelines and standards.

The parties chose to pursue a fact-finding hearing by the Special Master with Report and Recommendation to the Court, and *de novo* review by the Court, as provided for in Paragraph IV.E of the Stipulation and Amended Order Re: Special Master Order of Reference. The Special Master held this fact-finding hearing on December 14, 2007 with both parties.

The resultant report to the Court recommended a revision of policy and procedure consistent with the reading of the law captured in the Special Master's report; a plan for training Deputy Commissioners and Paroles Division staff initially and in continuing education; and plans for setting minimum standards for Deputy Commissioners conducting revocation hearings, and for evaluating those hearing officers. The report recommended no orders concerning continuing hearings to gather more competent evidence, and an order denying the request to fund appeals concerning the handling of confrontation rights objections. The Court adopted this Report and Recommendations in an Order issued March 25, 2008.[70] Defendants filed a Notice of Appeal to the Ninth Circuit on April 8, 2008 and have requested a stay on the order pending appeal.

Defendants have proceeded in good faith on this topic, negotiating with Plaintiffs, bringing the disputed questions for Court resolution, and continuing to require application of the *Comito* standard unless and until they receive a ruling that they may change practice to conform to their interpretation of the case law.

The assessment in this Report does not concern what standard may be applied in the future, but rather, the practices under the current obligation of the Permanent Injunction. As detailed in the Report and Recommendations and in prior reports of the Special Master, some Deputy Commissioners' practice in this regard is poor. To the Special Master's knowledge, those known to have applied the standards incorrectly have not been given additional guidance, correction, or supervision; Defendants have not sought to determine the scope of this problem; and remedial efforts appear to have been confined to one refresher training that was limited in time and utility.

§ There is poor compliance on this requirement.

Monitoring by Plaintiffs "as reasonably necessary"

The parties have negotiated monitoring agreements for each of the years since 2005, which included plans for producing documentation and for onsite monitoring. Plaintiffs' facilities monitoring has been reduced annually; they report that original schedules encompassed 82 days onsite, and 2007 and 2008 visits are for a total of 46 days or fewer per year. In part, this change was premised on Defendants undertaking self-monitoring and providing reports.[71]

Plaintiffs describe several problems in implementation. They are concerned that the methods used to inform parolees of scheduled interviews with Plaintiffs' counsel, and the conditions in which parolees must wait, may be a disincentive to participation in some locations, as evidenced by some high refusal rates. Not all steps in the *Valdivia* process occur during every visit, resulting in limited information from which to assess some practices. Documents are provided monthly, but contain much less information than Plaintiffs expected when negotiating the monitoring agreements. Plaintiffs also describe delays in provision of documents related to site visits and notice of training sessions. Sometimes the timing of documents preparatory to a visit had the effect of preventing Plaintiffs from conducting monitoring activities they would have chosen had they had advance information.

The Special Master agrees, particularly, that the timing, completeness, and clarity of promised documentation is often lacking, and that this is an important component of monitoring. Defendants should address this concern, and look into the others raised, at a minimum.

- While noting the described limitations, the parties are carrying out their onsite monitoring agreement and self-monitoring reports supplement Plaintiffs'

observations. On balance, there is adequate progress and compliance on this requirement.

Other Permanent Injunction requirements:

Expedited probable cause hearing shall be held upon sufficient offer of proof that there is a complete defense to all charges

No new information came to the Special Master's attention through observation or information from the parties.

Plaintiffs are very troubled by the absence of known expedited hearings and a mechanism to carry them out, citing the potential unnecessary additional days to hearing for parolees with an absolute defense and importance of this requirement during negotiations of the Permanent Injunction. They argue that this requirement should be addressed with much more urgency. The Special Master declines to request an order at this time.

The parole officer and supervisor will confer within 48 hours to determine if probable cause exists to continue a hold

Defendants note that this procedure is well-established and data support the assertion that this practice happens consistently. According to the Special Master's analysis of Defendants' data, the figures were:

Average cases per month:	11,588[72]
Timely:	97% of known cases[73]
Unknown:	13%[74]

Stated differently, one can only verify that 84% of probable cause determinations were timely; the remainder may or may not have been timely.[75]

This compliance rate remained essentially steady among the known cases. In absolute numbers, the institutions missing the deadline the most were Los Angeles County Jail and Wasco State Prison, but they were each at 95% compliance or better each month. Similar rates were observed in methodologically sound studies conducted for self-monitoring tours.[76] The Special Master did not undertake an analysis of the degree of lateness for the cases exceeding the deadline.

During the last Round, the Special Master learned that Unit Supervisors sometimes conduct an independent review when they are unable to discuss a case with the parole agents, which does not satisfy the conference requirement. The frequency of this practice is unknown, and the Special Master did not learn whether there was any change during this Round.

§ There is good compliance on this requirement.

Final hearing within 35 days of the placement of the parole hold

Deputy Commissioners conduct some aspects of revocation hearings well, while other aspects impacting on due process require significant attention.[77] In the main, they are observed to conduct ADA reviews reasonably well to determine parolees' ability to understand and participate and to identify any reasonable accommodations needed. Self-monitoring reports mention some exceptions and that the monitors intervened with corrections. Reports comment only erratically on whether Deputy Commissioners verified that parolees received and understood notice of their charges and rights, and the Special Master has observed this occurring inconsistently in practice. Similarly, Deputy Commissioners do not always mention the right to object if the parolee believes the

hearing officer may not be impartial, nor the right of appeal and mechanisms for exercising it.[78]

Hearings do typically name the charges, lay the foundation for them, and take pleas.[79] The Special Master observed parolees being permitted to present all evidence they requested; reports in this Round do not cite any denials or unreasonable limits, although that has been cited as a rarely observed issue in the past. The parolee's attorney, the parole agent, and the Deputy Commissioner freely question witnesses. The parolee is permitted to testify and to present evidence going to the charges and to mitigation.

Practices with the state's evidence are more problematic. Monitors and the Special Master have seen instances of objections not recorded or handled inconsistent with policy and usual legal reasoning.[80] Examples came to the Special Master's attention during the Round of poor handling of objections concerning balancing proffered hearsay against a parolee's right of confrontation.[81] Defendants' data printouts show a significant number of postponements to gather more evidence, a problematic issue as to the state's evidence, as discussed below.[82]

Policy and practice concerning fearful witnesses is being renegotiated, but its current application is problematic. Some Deputy Commissioners examine the basis for a witness' request to testify outside the presence of the parolee; others permit such testimony based on witness request alone, with some of those Deputy Commissioners asserting that they understand this to be Board policy. This latter practice appears inconsistent with the law as stated in *Morrissey*, which excuses confrontation on the basis of fear only where the informant's identity is unknown to the parolee and requires a hearing officer determination of the risk of harm. Defendants note that there is a

Stipulated Order in this case, referenced in the Background section above, on a related topic. It permits Paroles Division to limit information shared based on a witness' subjective report of fearfulness; that Order covers the witness' contact information shared with the parolee's attorney, but does not discuss the circumstances of hearing testimony.

Previously, Deputy Commissioners dismissed charges in response to an objection that the Permanent Injunction's timeframes had been exceeded. The parties observed none of these dismissals in the Round's monitoring, and only one was apparent in Defendants' data analysis.[83] In the few timeframe objections observed, Deputy Commissioners found that a specified good cause justified the later hearing date, or held that the interest of public safety provided reason for going forward despite the timeframe violation. This latter practice is not based in case law or written policy, to the Special Master's knowledge. The parties acknowledge that public safety is not good cause for missing the ordered deadline.[84] However, tracking material and monitoring reports suggest that this practice happens rarely.[85] Plaintiffs argue that this practice occurs much more than is indicated in these documents, and that Defendants should be required to conduct more rigorous tracking and adopt procedures to ensure that these cases are prioritized in scheduling so that the Deputy Commissioners do not face the choice of violating timeframes or releasing someone thought to be a threat to public safety. Plaintiffs are concerned that this and other practices vitiate the 35-day requirement in the absence of evidence that cases are dismissed for violating the deadline.

There were certainly also examples of Deputy Commissioners sustaining objections or overruling them on sound bases and dismissing or amending charges for lack of competent evidence.[86] In order to satisfy due process, much more education and

guidance will be needed to ensure that these principles are more widely understood and practiced.

The Special Master and parties have seen remedial sanctions explicitly considered in hearings much more often than in the past, though documentation frequently omits mention of it. The bases for findings of good cause can be incomplete, both orally and in the written record.[87] The Board does routinely provide parolees a written record of the proceedings.

During the Round, there were an average of 2,370 revocation hearings handled each month, with timeliness numbers as follows.

Timely:	98% of known cases, the same as in the last Round[88]
Unknown:	55%[89]

Stated differently, this means that one can only verify that 44% of revocation hearings were timely;[90] the rest might or might not be timely.

The timeliness reflected in monitoring reports was 89%. Among the handful of cases late in that aggregate sample, only one was heard close to the deadline. Most were heard within two weeks after the timeframe, and two were further delayed. [91]

When looking at printouts of *all* open and closed cases together, the timeliness rate appears to be 51%,[92] indicating that the great majority of the unknown cases are untimely. The question, then, is whether those are justified by good cause, as Defendants indicate.

To assess this, Defendants review monthly all probable cause hearings and revocation hearings recorded as completed beyond timeframes.[93] A number of revocation hearings were determined not to have been late for one of several reasons: data entry errors, optional waiver cases heard timely after activation, interstate cases not subject to

Valdivia requirements, parolees returned from other states and seen timely after their reentry dates, not in custody hearings held not long after the 35-day timeframe, parolee waivers, and rehearings. In the latter case, it is troubling that a growing number of rehearings are necessary because of ineligibility for, or unavailability of, remedial sanctions. This may not be strictly a timeframe issue, as there has generally been a timely finding of probable cause, but is problematic for reasons discussed elsewhere in this report.

Among the completed cases, then, only 47 were late in a six-month period, with 11% missing by only a few days. About 30% were held after a very long period, as much as three weeks to more than four months late. This study did not include any open cases, a large proportion of cases at this step.

Reasons were only recorded in half of these cases. Most were single examples of a variety of problems. Delay for witnesses was one of the few repeated issues and took from one to three weeks after the deadline to be heard, as did operations obstacles.[94] A parolee refusal was rescheduled within four business days; parolee medical or mental health needs led to hearings held one and-one-half weeks to three months later. Where delay resulted from staff error, it was corrected quickly.[95]

Defendants' analysis, then, shows that less than 1/10% of completed revocation hearings were genuinely late during the Round. Open cases also carry the possibility of being late without good cause, and should also be examined in the future. While the lengthy time to hearing in some cases is problematic, the low frequency suggests excellent practice.

Other data reports show 750 postponed hearings during the Round, another possible source of information about delays and their reasons. This frequency of postponed hearings was cut almost in half from the preceding Round.[96] Some of these postponed hearings likely remain open, but the number of postponements being substantially higher than the number of late closed hearings suggests that many postponed hearings were rescheduled within timeframes.

The most frequent reasons were transportation issues (93; 1% of hearings), parolee request (165), and the need for other evidence (243; 3% of hearings).[97] A parolee request, of course, is good cause; transportation issues are not. It is heartening that postponements for other evidence, a potentially problematic practice, was reduced by *more* than half. While it is possible that these were generated by parolees, that was only clearly recorded in eight cases. When the state's witnesses are not present, exigent circumstances justify postponements, but only five entries reflected such unforeseeable delays. Otherwise, it does not appear proper for the state not to provide a final hearing under these circumstances.[98]

There were some issues with attorneys that may merit attention to whether systems need to be improved, or individual performance addressed; these included 51 occasions when the attorney was unavailable, was removed, had not obtained gate clearance, or had a conflict. These affected about ½% of the completed revocation hearings. CalPAP appropriately notes that, as with some other postponement reasons, exigent circumstances explain some cases and that fact is not captured in the categories of this data report. Those postponements that are cause for the greatest concern – rescheduling for arranging reasonable accommodation, Deputy Commissioner

unavailability, exceptions made for public safety -- were confined to a very small number of instances (each was six or fewer) in Defendants' report.[99]

In summary, the growing amount of information discernible about timeliness is consistent with Defendants' longstanding description that few revocation hearings are late and many of those are explained by good cause or alternative situations, which themselves are heard timely according to their alternate timeline expectations. For the known cases, timeliness is excellent. To the extent that numbers have improved, Defendants have not described any change in practices, so it is unclear whether the improvements were by design and, therefore, whether they are likely to be sustained. Additionally, as described above, several substantive practices are inadequately developed or practiced inconsistently, potentially undermining due process.

- § On balance, then, performance on this requirement is adequate and progress is uncertain.

By July 1, 2004, an assessment of availability of facilities and a plan to provide hearing space for probable cause hearings

Defendants reported difficulty during the last Round in holding hearings in three county jails: San Joaquin, Kings, and Butte. They have continued with transporting parolees to other facilities for the hearings while negotiating other arrangements. In San Joaquin County, Defendants report the most recent development is an agreement to transport parolees to Deuel Vocational Institution for hearings.[100] Plaintiffs raise the concern of whether the additional distance to Deuel Vocational Institution would require the hearings to take place more than 50 miles from the alleged violation in some cases.

At Butte County, telephonic hearings had been conducted with the parolee and attorney separated by glass and a nearly solid divider with a phone only on the attorney's side, placing severe limits on communication. Defendants acted quickly to replace this unacceptable arrangement with equipment more reasonably designed to permit all parties to hear and communicate simultaneously. In-person probable cause hearings, the great majority, are conducted in attorney visiting areas with the parolee separated from the Deputy Commissioner and attorney, or in a small room where they are face to face. Plaintiffs find this attorney-visiting arrangement unacceptable. Negotiations are ongoing with an eye toward accessing an attorney visiting-type space to conduct revocation hearings.[101]

Plaintiffs have raised concerns about the adequacy of the spaces provided at some facilities, particularly as regards noise and visibility. Hearings and attorney contacts at Santa Rita County Jail occur in a gym reportedly with a high sound level.[102] At Los Angeles County Jail, attorney contacts before hearings occur in a room with an open door and deputy traffic through the room, as well as an officer posted in the room despite the parolee being waist-chained and secured to the floor.[103] Notice occurs in public areas in a number of facilities. These practices have a potential impact on effective communication, effective attorney representation, and parolee safety if sensitive information were to become known publicly.

As noted in the Special Master's Third Report, proceedings at jails can be substantially slowed by Board staff only having access to a dial-up internet connection. While improving this is not a legal requirement, Defendants have taken extra steps to address this obstacle. Plans to install high speed internet access are underway in

approximately 30 facilities that will allow it; lines have been identified or dropped, equipment has been purchased, and telecommunications staff time has been dedicated. Defendants report that they continue to explore possibilities for high-speed connections in the other jails, including making use of the jails' existing connections.[104]

- § There is good compliance on this requirement.

By July 1, 2005, probable cause hearings shall be held no later than 10 business days after service of charges and rights

As described in earlier reports, Deputy Commissioners' practice is variable as to assessing a parolee's comprehension and need for reasonable accommodation, but they generally incorporate some form of ADA review.[105] Some orient the parolees and verify that they received notice of their violations and rights; some do not. Deputy Commissioners do not seem to share a common understanding of the purpose of the hearing. That is, in some hearings, the Deputy Commissioner names the charges, gives the factual basis for them, invites argument concerning probable cause, and makes an express finding of whether there is probable cause for each charge and gave the bases for those findings; in other hearings, some or all of these elements are missing as the Deputy Commissioner emphasizes other features such as moving the case to the next step or negotiating disposition. CDCR must continue to give guidance about the due process elements of this proceeding so that they do not become obscured by the Deputy Commissioners' other responsibilities.

In observed hearings, Deputy Commissioners generally permitted the parolees and attorneys time to speak, including presenting factors in mitigation. These hearing officers explicitly considered remedial sanctions more than in the past and increasingly

ordered placements, though documentation often did not reflect that consideration. Some Deputy Commissioners dismissed or amended charges because of a lack of probable cause and most negotiated concerning disposition. Parolees were routinely provided a written record at the conclusion of their hearings.

On average during the Round, staff completed 7,312 probable cause hearings per month, which appears to be an increase of about 4%. At any given time, they were also handling an average of another 1,299 open cases.[106]

Just prior to these hearings, it appears that Return to Custody Assessments resolved about 6% of holds with dismissals, directions to continue on parole or release with credit for time served, or placement in Proposition 36 drug treatment.[107]

As to meeting the timing requirements, it appears:

Timely: 95% of known cases, the same rate as in the prior Round[108]
Unknown: 15%[109]

Stated differently, this means that one can only verify that 81% of probable cause hearings were timely;[110] the rest might or might not be timely.

Monitoring reports reflected a similar compliance rate.[111] The degree to which the monitored cases were late was recorded for only a few; among them, the majority were heard within a day or two of the deadline, and the rest took from three days to three weeks' additional time.

California Institution for Men continued to manage its probable cause hearings extraordinarily well; it had the second highest volume in the state but only 2% to 3% of the known cases were late.[112] Richard J. Donovan Correctional Facility maintained similarly low late-case percentages and High Desert State Prison sometimes had no late

cases. Wasco State Prison and Los Angeles County Jail were the furthest from compliance, with late cases ranging from 5% to 10% of high absolute numbers.

A study of late cases suggests that 86% of *all* cases were timely, and 91% were completed within two days after the deadline.[113] The remaining 9% were shown as completed or pending as much as 367 business days later,[114] although some are not subject to the same timelines or are explained by good cause.

Defendants' information system shows 2,351 probable cause hearings postponed. This represents about 8% of the total hearings, a significant increase from the prior Round.[115] By far, the most frequent reasons were parolee waiver (460), the parolee being out to court (570) and transportation difficulties (426); transportation issues appeared greatly improved.[116]

There were many reasons recorded; most should be considered good cause for postponement only *if* reasonable actions were taken to foresee and prevent them and the hearings were rescheduled in a reasonable time. The parties have had limited discussion of defining which reasons constitute good cause and under what conditions. Table 4 captures likely categories among the reasons currently recorded:

Table 4[117]

Clearly permissible	Good cause only *if* reasonable efforts to foresee, prevent, and respond	Likely requires attention to reduce
Parolee waiver (460)	ADA accommodation/interpreter (9)	Attorney scheduling/ availability/ timely interviews (55)
Parolee refusal (29)	Attorney conflict (2)	DC unavailable (4)
Federal custody (4)	DC conflict (2)	Custody unavailable (4)
	Document or witness needed (19) (permissible if parolee-requested)	Transportation (426)
	Drug program eligibility error, availability, or parolee failure (67)[118]	
	Emergency (San Diego fires) (62)	
	Lockdown (247)	

Medical (139)
Mental health (48)
Miscellaneous decision (8)
Parolee transferred (112)
Out to court (570)
Determine remedial sanctions eligibility (8)
Supplemental charges (5)
Telephonic hearing becomes in-person (9)

Unable to locate parolee/ "parolee unavailable" (28)

In the nature of a large system, there will invariably be a low occurrence of many types of system breakdowns. When the numbers are in a fraction of a percent, CDCR need not try to eliminate the problem; those issues are raised where they are unlikely to be justified by good cause and to note that they may require attention should the numbers increase.

A few issues merit particular comment.[119] The frequency of postponements for medical reasons fell substantially; this may indicate that there was less illness or that CDCR oversaw it better, checking whether sick or injured parolees could participate in hearings rather than ruling them out in a blanket fashion. The downside of increased remedial sanctions use was apparent, with hearing delays attendant to bed availability, mistakes concerning eligibility leading to rehearing, and second hearings becoming necessary for parolees who failed in their programs. It was not fully discernible which postponements resulted from parolee actions and which from staff's. While better staff education and bed access are desirable, these listed breakdowns affected fewer than 4%[120] of relevant remedial sanctions referrals.

In a large subset of the postponements, the data report captures lengths of time associated with them. These appear to be the length of time permitted for rescheduling.

Some are short and proportionate to the problem, or tied to a particular event such as a court hearing.

Others should be addressed. They are unreasonably lengthy and, since they are assigned repeatedly to certain events, appear to flow from policy or routine practice. Transportation and custody staff problems, parolees out to court, parolees who could not be located, and miscellaneous decision rehearings were commonly permitted 30 days, and sometimes more. Some determinations of remedial sanction eligibility were allowed 60 days. When parolees refused hearings or transferred to other institutions, rescheduling time was commonly listed as one to three months; likewise, rescheduling after Deputy Commissioner unavailability, and once for an interpreter, was allowed up to 90 days. Revisiting ICDTP eligibility, availability, and failure seems to have been scheduled for three weeks to three months. Some of the hearings canceled by the San Diego fires were allowed three to six months to reschedule.

The actual times to rescheduled hearings were not practically determinable. They may well have occurred more quickly than the outer limits suggested by these times. Nevertheless, staff should not have the impression that it is reasonable to routinely permit months before a probable cause hearing.

The practice of conducting some probable cause hearings by telephone remained in dispute; the parties' positions were outlined in the Special Master's Third Report. The frequency of these hearings increased during this Round, although they were still confined to about 1% of all hearings.[121] The large majority continued to be concentrated at a small number of institutions: Deuel Vocational Institution (through Fall 2007 only),

and county jails in Placer, Stanislaus, San Joaquin, and Merced. The Special Master continued an investigation into the issue and a report will issue in the coming months.

- § Performance on this requirement is adequate. Since Defendants have not described any change in practices, it is unclear whether the improvements above were by design. Thus, whether there is progress is uncertain.

Defendants shall develop and implement policies and procedures for designation of information as confidential consistent w/ requirements of due process

At least four monitoring reports during the Round revealed that redaction in excess of the requirements continues in some cases, though interviewed CalPAP attorneys generally indicated that the practice occurred significantly less often than in the past. Defendants are exercising oversight of this issue during self-monitoring visits.

- § As the scope and impact of this practice is uncertain, compliance status is unknown.

Defendants shall assure that parolees receive effective communication throughout the process

Defendants have instituted systems, under requirement of this Court and the *Armstrong* court, to screen for the need for effective communication assistance, or other reasonable accommodation, by review of computerized and hard copy records, and by observation and questioning, at multiple steps in the revocation process.

When the form documenting these reviews (a "1073") is not included in revocation packets, it raises the risk of the reviews having been overlooked, or the risk of needed accommodations not being identified ahead and therefore not provided or causing delays in hearings. CalPAP tracks the frequency of the absence of these forms, and reports it occurred at a rate of 4% during the Round, this is consistent with the prior

Round and affected an average of 318 cases per month.[122] This issue was principally concentrated at California Institution for Men, Los Angeles County Jail, and Pitchess Detention Center. Los Angeles County Jail made a dramatic improvement in October, and maintained about that level subsequently. California Institution for Men declined further during each month. Other decentralized revocation units saw good reductions of the problem in recent months. The best performance was typically found at High Desert State Prison and Central California Women's Facility and, at Rio Cosumnes Correctional Center among the higher volume facilities.

Similarly, when a disability is identified, Defendants require staff to provide copies of source documents providing further information about the condition. This practice has not been well-established. Teams observed failures during each self-monitoring tour this Round.[123] Necessary copies were not present in 19% of all relevant revocation packets, according to CalPAP tracking; this rate is unchanged from the prior Round. California Institution for Men, Los Angeles County Jail, and R.J. Donovan Correctional Facility had the worst track records, though the latter two improved recently; Los Angeles County Jail had a particularly dramatic turnaround, reducing a 40% failure rate to 6% in one month. The Special Master applauds the effort and hopes that it is based in practice changes that can be sustained. The best performance was typically found at High Desert State Prison and Central California Women's Facility, and at Deuel Vocational Institution among the higher volume facilities.

It is clear to the Special Master, on observation, that ADA reviews have been adopted as routine, but the thoroughness of the procedures employed continues to vary. Notice was rarely observed in this Round's monitoring visits, but the parties found the

notice agents' ADA reviews to be reasonably conducted.[124] Most Deputy Commissioners observed during site visits reviewed the database, had parolees verify the content of related forms, and asked questions about potential limitations. A few did not, saying they relied on the parolee or attorney to identify the need.[125] Monitoring continues to reveal frequent deficiencies in the documentation.[126] Forms commonly fail to indicate whether some source material has been reviewed, or one of several forms of information about possible accommodations can be missing or contradictory. These give the impression that the general task was completed but with insufficient attention to markings, but the risk is present that necessary components were not completed and could compromise providing a needed accommodation.

Despite the availability of multiple disability information sources and procedures for checking them and conveying information, occasional examples have surfaced in which known disabilities were not carried forward. There were at least six examples identified in monitoring reports during this Round, and many more in the earlier months of 2007.[127] While these are small absolute numbers, they are a substantial enough proportion of the number of parolees reviewed onsite to merit monitoring whether this is more than an occasional human error.

Defendants provided a printout showing 9,849 accommodations provided over a four-month period[128] pursuant to need identified at earlier steps in the revocation process. A high number, 7,063, were also identified during a contact and accommodations provided. This happened substantially more at Los Angeles County Jail – more than three times as many disabilities were identified during the contact as were identified ahead – and at California Institution for Men. These numbers illustrate that Defendants are

providing accommodations, though they also suggest a failure to identify in some locations. Anecdotally, staff also indicate a recurrent issue at Los Angeles County Jail in which deputies disagree with a parolee's asserted need for a wheelchair. When this issue arose during a recent site visit, the Deputy Commissioner insisted that a wheelchair be provided during a hearing and access to that room.[129] Similar problems with accommodating mobility limitations were noted in a few instances at Santa Rita County Jail, and staff's ability to arrange accommodations and provide related grievance forms impressed the monitor as insufficient.[130] Accommodations were noted as provided in other reports.

In terms of translation, Defendants commonly use a phone translation service. Paroles Division and Board staff routinely carry the phone equipment, which can generally be used in decentralized revocation units and some jails. Monitoring reports note at least 12 facilities where it cannot be used for notice, hearings, or attorney visits.[131] No problems were reported in obtaining in-person translation when needed.

Defendants provided a report showing, over a nine-month period, use of a sign language interpreter in 24 revocation hearings, 113 probable cause hearings, and two proceedings concerning revocation extension. While not definitive on the question of whether this service is provided when needed, this illustrates a significant amount of usage.[132] On the other hand, the six cases showing an interpreter at revocation hearing, but not at the probable cause hearing, suggest failures at that earlier step. Defendants have not yet, and will need to, demonstrate availability of this service during notice service and attorney consultation. Interviewed staff knew how to arrange for this service. Monitoring surfaced single instances of failure or delay for this accommodation.

§ There is adequate performance on this requirement. Progress is unchanged.

Forms provided to parolees are to be reviewed for accuracy, simplified, and translated to Spanish

Defendants report that, although a few items remain in dispute, the parties have reached agreement on forms content sufficient to begin the translation and printing process.[133] One form in dispute reportedly has language requiring parolees to have requested an accommodation before a hearing in order to file a grievance about the accommodation not being provided; another concerns there being no mechanism on the notice of rights for requesting an expedited hearing. Plaintiffs assert that Deputy Commissioners should be required to document having checked the computerized disability database, and Defendants have declined to amend that form. The parties have not reached agreement regarding "not in custody" procedures and forms.

In their objections, Plaintiffs note that there are forms in circulation that have never been translated into Spanish as required. Defendants argue that translation of evolving documents is impractical and cannot be expected until negotiation is complete, which only occurred recently.

§ There is adequate compliance on this requirement.

Upon written request, parolees shall be provided access to tapes of revocation hearings

Logs showed 391 tape requests during a five-month period. Of those, 98% were answered, or were pending, within a 30-day timeframe; this represents an improvement. The longest outlier took five months. There were nine cases where a second request was

made for the same tape after a letter had been sent; it is unclear whether this is explained by mail delays, tape quality, or other reasons.[134]

- § There is good compliance on this requirement.

At probable cause hearings, parolees are to have the ability to present evidence to defend or mitigate the charges or proposed disposition

No new information came to the Special Master's attention through observation or information from the parties.

On or before the fourth business day, the Parole Administrator shall review the packet to determine whether the case is sufficient to move forward and whether remedial sanctions may be appropriate

Information system reports show that the number of cases Parole Administrators handled continued to climb to 47,966, about a 10% increase.[135] It was not possible to determine timeliness.[136] Among these, 2,121 cases (4% of the total) are shown as being forwarded to the Return to Custody Assessment step without Parole Administrator action. This occurred most often at Los Angeles County Jail and California Institution for Men.

Staff explained two common reasons: extradition cases routinely are not handled by Parole Administrators, and sometimes staff forward the cases without review in order to meet hearing deadlines. Despite the Special Master calling, in the Third Report, for an examination of missed cases, it does not appear that staff looked into the validity of these numbers, identified the reasons with certainty, or addressed practices inconsistent with Permanent Injunction requirements.

During this Round's reviews, Parole Administrators continued 882 people on parole or recommended that the Board do so, dismissed their violations, or instructed that their holds be removed. Additionally, Parole Administrators recommended 2,183 ICDTP placements and referred 45 to Parolee Service Centers, 54 to Residential Multi-Service Centers (including 6 women), 191 to Parolee Substance Abuse Program, 4 to Day Reporting Centers, 8 to Substance Abuse Treatment and Recovery Centers, 19 to other programs, and 9 for Electronic In Home Detention. Collectively, these actions removing parolees from the revocation process, or recommending it, represented about 7% of the cases reviewed at this step, an increase over the prior Round.

- There is insufficient information to make a determination about compliance with this issue.

Defendants shall maintain staffing levels sufficient to meet all obligations under the Order

There continues to be difficulty in providing clear and consistent information about the number of established positions, the amount of time dedicated to *Valdivia* for those positions with multiple responsibilities, the vacancy rate, and the amount of coverage for them.

It appears that no established positions have been gained or lost since the Special Master's Third Report.[137] There is a high rate of filled positions in many classifications, particularly in the Paroles and Institutions divisions. High vacancy rates, however, are apparent in key positions:

- The Chief Deputy Commissioner position has not been permanently staffed long-term, and about 30% of the Associate Chief Deputy Commissioner positions are vacant. All of these are covered in an acting capacity, but this borrows from other job classifications where staff are also needed.

- § Only about half of the staff counsel positions – largely responsible for policy development and negotiation, Plaintiffs' monitoring tours, channeling information to and from the field, and other *Valdivia* responsibilities – are filled.

- § Almost 60% of Program Technician positions -- managers of hearing operations -- remain vacant, a long-term and growing problem.

- § Certain analyst, clerical, and clerical supervisory categories have 23-50% vacancy rates.

- § Almost one-quarter of Deputy Commissioner positions remain vacant. There reportedly is substantial coverage by retired annuitants, but Defendants did not provide requested information as to the number of vacancies covered in this manner.

The Deputy Commissioner positions appear the most problematic. Defendants reported a similar number of vacancies in 2006, Fall 2007, and currently, despite at least two waves of recruiting in the interim that reportedly covered the vacancies each time. The numbers are further diminished by several serving in acting supervisory roles throughout the term of the Mastership. Reportedly, all recent hires have been "training and development" or limited term retired annuitants without direct experience in conducting hearings or other *Valdivia* duties. There reportedly is no structure or expectation of providing any training, development, or supervision additional to that provided to other Deputy Commissioners, a position that operates essentially autonomously.

Thus, not only is CDCR facing a chronic 25% shortage or more for Deputy Commissioners, but it would appear that turnover leaves an increasing number of staff who have limited experience. Anecdotally, staff in different locations and job classifications describe scheduling difficulties that may compound the shortages, with a mismatch between the numbers of Deputy Commissioners assigned and the cases to be

heard, difficulties reaching multiple sites where they are assigned, and related issues. Plaintiffs also point to potential difficulties if the substantial number of retired annuitants reach their maximum annual hours before year-end or before trainings if those are offered late in the year.

There has not yet been an assessment of whether the number and type of established positions are sufficient for *Valdivia* requirements, but some of the foregoing raises substantial questions about Defendants' ability to provide timely hearings consistent with due process given the state of Deputy Commissioner recruiting, retention, and education.

- § Since there have not been compliance failures clearly arising from the lack of staffing, there is adequate performance on this requirement. However, the decline, the sustained recruiting and retention problems in some classifications, and the difficulty in reconciling the actual positions funded are cause for substantial concern and close oversight.

Agreed-upon mechanism for addressing concerns regarding individual class members and emergencies

Logs indicate that Plaintiffs employed this mechanism on 117 occasions during the Round.[138] Most received a response within a month, as agreed by the parties; 15% exceeded that time, during periods when a larger number of requests were submitted, but were concluded within six weeks. Concerns were most often generated from California Institution for Men, Deuel Vocational Institution, Los Angeles County Jail, San Quentin State Prison, and Santa Rita County Jail. The greatest numbers of requests regarded potentially late revocation hearings, probable cause hearings, or notice service; treatment of optional waivers; issues of mental illness; ADA accommodations; and over-detention. Other topics included confrontation rights, delays in accessing drug treatment programs,

sex offenders' housing restrictions, and requests for hearing tapes. Issues were resolved, by addressing them or forwarding information, in 68 of the cases, according to the log. The others were determined, after investigation, not to be a problem, or described as falling outside *Valdivia.*

§ There is adequate compliance on this requirement; progress is unchanged.

Appeals

Defendants object to a discussion of appeals in the Special Master's reports because requirements concerning appeals are not contained in the Permanent Injunction. While appeals are not subject to a *Valdivia* court order, they were expressly reserved in the Permanent Injunction as an open issue in the litigation that the parties expected to negotiate.

Regulations provide for a process of reviewing hearing decisions. To carry this out, the Board and the Paroles Division jointly issued a policy governing a process referred to as "decision review"; the policy was issued on April 4, 2007 and came to the attention of the Special Master during the last Round.[139] It was distributed to staff without review and input by Plaintiffs, who argued that the issued policy violated paragraphs 10, 14, 21, 23, 24 and 31 of the *Valdivia* Permanent Injunction.

Defendants did agree to reconsider the policy. On June 29, 2007, the parties discussed the status of this issue and Defendants agreed to provide a draft of a revised policy for the Plaintiffs to review by the end of August 2007. Defendants rescinded the issued policy almost three months later, in September of 2007. The Special Master met with the Defendants in November of 2007 and indicated that this issue was a priority for

the Round. Defendants did not provide the Office of the Special Master and Plaintiffs with a draft revised policy until March 7, 2008.

The revised policy addresses one concern raised by Plaintiffs, allowing an appeal of a parole revocation by parolees or their representatives, as well as parole agents. Access has also been provided for victims. The proposed policy also provides notice to the parolee or his or her representative that a decision is being reviewed. It allows hearing decisions to be modified without a rehearing, without specifying when this would or would not be appropriate and in so doing, does not provide an opportunity to challenge the review and any new evidence being considered.

Although the proposed draft policy builds on regulatory authority, it potentially creates a parallel system to the *Valdivia* process. Such a system raises questions that are central to the Permanent Injunction. Provisions of the Permanent Injunction that speak to the right of the parolee to access, examine, and confront information that can result in a loss of liberty are impacted by this draft policy. There remains the potential of undermining the finality of decisions made in the *Valdivia* process.

In the meantime, hearing decisions are being reviewed, with the outcomes adjusted or a rehearing ordered, by headquarters supervisory staff on a recognized track, and by other Associate Chief Deputy Commissioners in at least some of the regions.[140] The informal exercise of appeals must be addressed and an official system, if development of one proceeds, must have adequate features consistent with due process.

- Some progress has been made on this issue.

Revocation Extension Proceedings

According to parties' communications, they made substantial progress in negotiating widespread changes to policies and procedures concerning revocation extensions. They report that the negotiators have come to agreement on all points except the appropriateness of conducting proceedings by telephone, especially for disabled populations who may not communicate or understand well in that medium. Reportedly, the policies are currently being reviewed by union representatives. Self-monitoring staff continue to conduct monthly conference calls to improve and troubleshoot practices.[141]

§ There is good progress and adequate compliance on this requirement.

Whether revocation hearings are held within 50 miles of the alleged violation

CalPAP has attorneys contemporaneously report hearings held further than 50 miles from the alleged violation. CalPAP's database shows eight instances in the Round, an improvement from the prior Round and a rate of only 0.2%.[142] Defendants' database showed two such occurrences as reason for postponement, and one indicated that up to three weeks would be allowed for rescheduling; this is not reasonable.[143] No other related information came to the Special Master's attention.

o This issue is compliant at this time.

Interpretation Issues:

Length of time to hearing when a parolee is subject to extradition

The self-monitoring team undertook an examination of the timeliness of revocation steps for parolees returned to California from other jurisdictions. They used excellent methods well designed to identify and address the problems.

Staff began with an audit employing sound methodology to determine the occurrence and scope of any problems.[144] They found that notices were often served late (28%). As to degree:

- about one-third were only one day late
- another 20% were two business days late
- one was missed, and
- the remaining, large subset was served three to seven business days late.

The audit showed probable cause hearing timeliness for this population consistent with that of other parolees.[145]

- almost all of the late cases were completed within one business day
- the longest delay was four business days and one case was initially heard timely but postponed for a month
- a few appeared not to have had a hearing

Two of the cases that went to revocation hearing were one to four days late.

In response, staff say they convened a series of interdivisional meetings to review policy and brainstorm possible obstacles and remedies. They reportedly attempted several solutions aimed at clarifying responsibilities and increasing communication and transmission of critical documents.[146]

Defendants conducted two further audits.[147] Compliance rates were essentially unchanged, with:

- the longest time to service being 11 business days

- a higher number of missed serves (5)
- longer times to hearing for the delayed probable cause hearings; only 3 were heard in 1 to 2 business days after the deadline
- the other late probable cause hearings occurred 3 to 12 business days late, largely because of a medical lockdown

Staff say they revised the solutions to address the continued breakdowns and implemented those shortly before the writing of this report. The workgroup reportedly continues to meet to oversee the remedies and it plans to conduct further audits.[148]

- There is adequate performance and good progress on this item.

Whether parolees may be removed while fearful witnesses testify, subject to the parolee's attorney's examination, but not the parolee's direct confrontation

The parties have been in disagreement about this issue for a lengthy period and meet and confer sessions were not active for some months. During the Round, and while the matter of confrontation rights was pending before the Special Master, Defendants issued a hearing directive instructing Deputy Commissioners on admitting evidence from fearful witnesses. By agreement of the parties and the Special Master, that hearing directive was withdrawn and the parties are to negotiate a mutually agreeable policy. The Special Master has not been informed as to any progress of those negotiations.

Parolee timeliness waivers, including whether they are voluntary, parolee attorneys are requesting them at a reasonable rate, and whether hearings are resumed after a reasonable time

Documents record 460 timeliness waivers made by the parolee at probable cause hearings during the Round, continuing to occur in 1.5% of the hearings.[149] The lengths of time waived were rarely recorded,[150] but among those documented, about one-third were

for one week or less, one-third ranged up to one month, and remaining third were for two to three months. The times to actual hearing were not practically discernible.

Additionally, there were 165 recorded timeliness waivers taken at revocation hearings, 2% or less of the total. The times requested were not always recorded, but those present were:

Up to 2 weeks:	34	1 to 2 months:	28
2 weeks to 1 month:	58	>2 to 6 months:	12

The lengths of time to actual hearing could not be discerned without extraordinary effort. The frequency and lengths of waivers were similar, or slightly improved, compared to the prior Round.

- There is reasonable practice as to parolees' attorneys taking waivers.

The following issues were noted in the First, Second, and Third Reports of the Special Master. They remain the subject of dispute or negotiation, but no new information developed during the Round, to the Special Master's knowledge.

1. Issues related to timing of notice or hearings

- Adequate notice to parolees of the dates of their revocation hearings
- Length of time to hearing when a parolee is allowed to remain "not in custody"
- Appropriate remedies and responses when the state does not meet its timeline obligations in an individual case

2. Issues related to attorney representation

- Parolee rights waivers before being appointed counsel

- § Whether there are sufficient provisions for attorney-client communications to be confidential in some locations

- § Whether state employees and witnesses will be provided with attorney representation during hearings

3. Evidentiary questions

- § Timely provision of all appropriate evidence to parolees' attorney

4. Other

- § Delayed release times engendered by extended holds placed once the parolee is nearing release in order to complete a sexually violent predator screening

- § Notice of the possibility of re-incarceration for life for life-term parolees who have been paroled and are facing parole revocation

- § Notice concerning credit-earning for parolees housed at county jails

Relationship to Other Cases

Valdivia intersects with the *Coleman* case primarily in three instances. First, there is a need to house and treat parolees too mentally ill to participate in their hearings and to monitor their conditions so that hearings may be held consistent with due process. Second, a subset of those people may be diagnosed as needing treatment at the Department of Mental Health, and there have been historical barriers to their being placed there. Defendants have been negotiating an addendum to the Memorandum of Understanding between the two Departments, which would allow such placements, for at least nine months.

The timeliness and quality of care for the mentally ill parolees in reception centers also intersects with *Coleman* to the extent that if the level of care available to any

mentally ill parolee in those facilities is enhanced through *Coleman* activities it may correspondingly improve the care for parolees.

Valdivia also intersects with the *Armstrong* case by ensuring that effective communication assistance or other reasonable accommodation during the revocation process is provided to disabled class members. In addition, the jail and community-based ICDTP programs are monitored to ensure equal access for disabled class members.

At the request of the Special Master, Plaintiffs drafted monitoring guidelines for the community-based ICDTP programs. These guidelines are under review by the Defendants. The guidelines focus on eight subject areas with a major focus on ensuring equal access for disabled class members based on the requirements of the *Armstrong* case and the Americans With Disabilities Act.

Summary

The importance of skilled and stable leadership was once again made evident during this Round. The Round began with good cooperation between the leaders of the Paroles Division and the Board. Turnover at the executive level of the Board, combined with vacancies in many senior level positions, resulted in multiple challenges. CDCR moved quickly to fill the Executive Officer of the Board. The new Executive has demonstrated his understanding and willingness to partner with the Paroles Division, counsel and compliance unit staff.

The decision made to transfer ICDTP from the Paroles Division to the Division of Addiction and Recovery Services has also resulted in transition challenges. Duties were transferred without the requisite staffing and despite the best efforts of both Divisions, role and task confusion has resulted. This has impacted program

implementation and raised concerns about the credibility of data. Senior CDCR staff have committed that they will resolve these transition problems.

Another core challenge has been the change in relationships between the offices coordinating *Valdivia* compliance activities. While there has been staff turnover in past Rounds, the relationship continued to be one of respect and collaboration with each other, the Plaintiffs, and the Special Master. During this Round, failures of coordination and information-sharing meant that too often staff were pulled away from their responsibility of working toward compliance. The Special Master and Plaintiffs were challenged by the erratic provision of information which, in some instances, appeared to be withholding of information, in direct contravention of the Permanent Injunction's requirement to share draft policies with Plaintiffs, and the Order of Reference's requirement of access to CDCR staff. The Special Master had to clarify his level of access to CDCR agency staff and data on several occasions.

Despite these challenges, Defendants have made progress in several areas during this term. The most notable areas of progress include information services, self-monitoring, and remedial sanctions.

The Defendants have taken substantial steps to achieve the Court's November 2006 Order to implement improvements in their information systems. It appears that each of the components scheduled for delivery before March 2008 has been completed. The design of the testing instruments and the training materials has begun. There has been substantial progress in this area since the last Round. Continued progress is necessary to assure compliance in many critical areas.

The Office of Court Compliance has expanded its self-monitoring efforts despite not having all allocated positions filled. The unit uses valid methods to choose reasonably sized samples that are reviewed prior to self-monitoring visits. The self-monitoring reports provide accurate and detailed information for change and Office of Court Compliance staff engage agency staff in developing solutions to problems. The unit is developing plans for more systematic follow-up. The unit also engages in targeted interventions to investigate the scope of a suspected problem or to address known problems with a particular practice or in a specific location. The unit's rigorous analysis, combined with a problem-solving approach and information distribution, is an excellent foundation for achieving for compliance. The Special Master looks to see the remaining vacant staff positions filled in the next Round and continued progress in the refinement of the self-monitoring process.

Despite the expected challenges of starting up the community-based ICDTP 90-day programs, Defendants have opened access to many new beds in every region of the state. Defendants have also expanded the number of jail-based ICDTP beds. The genuine collaboration between the Paroles Division and the Division of Addiction and Recovery Service has resulted in creative responses to implementation issues of the community-based ICDTP programs. While it is still unclear exactly how many actual beds are available, it is clear that as of the end of February, more than 900 parolees were in the ICDTP program. This is significant improvement over the several hundred that were in ICDTP at the end of the last Round. The Defendants continue to engage in efforts to expand the number of both jail and community-based ICDTP beds. The Paroles Division and the Board have also worked well together to resolve referral problems to ICDTP. All

three Divisions appear to be working together to expand both the availability and use of the program by educating and training their respective staff about the programs. The Division of Addiction and Recovery Services is developing policies for community-based facility compliance with ADA regulations and standards. The challenge for the next Round will be to ensure that the number of community-based ICDTP beds purported to be available are actually accessible quickly enough to avoid unacceptable waiting periods for entrance to programs.

Not withstanding the difficulty in acquiring data, the Special Master has documented that the Defendants are making the interim remedial sanction programs of Residential Multi-Service Centers and Parolee Service Centers available for use as remedial sanctions and that use of these programs is increasing. An informal practice of prioritizing remedial sanctions at the top of waiting lists for Residential Multi-Service Centers is one example of how serious the Paroles Division is about the use of interim remedial sanctions. A continued problem is the failure to contract for any Female Residential Multi-Service Center beds. There also appears to be a moderate increase in the use of other placement opportunities such as Community-Based Coalitions, Day Reporting Centers and Substance Abuse Treatment and Recovery Centers.

There has also been a good joint effort by parties on bringing closure to, or demonstrating progress on, several longstanding issues such as revising revocation extension procedures, negotiating several policies, and finalizing forms.

Two areas in which progress has been poor are managing mentally ill parolees who are unable to meaningfully participate in revocation proceedings and the balancing of proffered hearsay

with parolees' confrontation rights. Both issues have consumed significant time and energy of the parties and of the Special Master.

As to hearsay and confrontation rights, the Court adopted the Report and Recommendation of the Special Master that resulted from the fact-finding hearing held by the Special Master in December of 2007. The adopted report recommends a revision of policy and procedure consistent with the reading of the law captured in the Special Master's report; a plan for training Deputy Commissioners and Paroles Division staff initially and in continuing education; and plans for setting minimum standards for Deputy Commissioners conducting revocation hearings, and for evaluating those hearing officers.

Progress on the issue of the development of procedures for mentally ill parolees who are unable to meaningfully participate in revocation proceedings has been negligible. Despite the Court's order of January 2008 and the Special Master's clear expectation that parolees have access to The Department of Mental Health, Defendants do not have an agreement on access and plan formulation is limited at best. Recognizing the complex nature and many challenges inherent in managing this population, the repeated failures of coordination and lack of a sustained effort by the Defendants has undermined the development of a plan to resolve this issue. This shall continue to be an area of major focus for the Special Master.

Another area of concern is the continued high vacancy rate for Deputy Commissioners and the high rate of turnover. This problem has been discussed with and is recognized by the new Executive Director of the Board. Without a more stable workforce, it will be difficult at best for the Board to make progress on many issues that are central to achieving compliance.

Major challenges remain in assuring sound policies and procedures for managing mentally ill parolees who are unable to participate in revocation proceedings. Other major

issues to be followed during the next term include: improvement in demonstrating compliance with the timelines of all facets of the revocation process; improved timely communication from the Defendants to all parties; development of compliance criteria; identification of the type and nature of information and management reports needed by the Defendants to achieve compliance, and continued improvement in the existence of and use of remedial sanctions.

Numerical recap: For those requirements where quantification is part of the compliance picture, the following are the likely compliance-related percentages. It should be noted that these numbers are based on Defendants' current information reporting capacity, which is incomplete; necessary changes to Defendants' tracking system are forthcoming.

	Compliance established	% unknown
Probable cause determination	84%	13%
Notice to parolee	85%	≥6%
Factual summary	81%	
Parole Administrator review	unknown	
Timely revocation packet to attorney	87%	4%
Notice of hearing date	92%	
Disability form in attorney packet	96%	
Source documents in attorney packet	81%	
Probable cause hearing	81%	15%
Revocation hearing	44%	55%
Hearing tape copies	98%	

Compliance recap: Substantive compliance is at least as important to due process and to reaching substantial compliance in *Valdivia.* The following summarizes the compliance levels of the substantive requirements of the Permanent Injunction or subsequent orders:

Good compliance:

- Decisionmaking matrix
- Information system changes
- Attorney appointment
- Probable cause determination
- Space and facilities
- Hearing tapes
- 50-mile limitation

Adequate compliance:

- Remedial sanctions policies and procedures
- ICDTP expansion
- Electronic in-home detention
- Interim remedial sanctions
- Dual diagnosis beds in ICDTP
- ADA policies for remedial sanctions
- Self-monitoring
- Consideration of remedial sanctions at each step
- General policies and procedures
- Notice of rights and charges
- Access to field files
- Presenting evidence on the same terms as the state
- Revocation extension
- Plaintiffs' monitoring
- Revocation hearings
- Probable cause hearings
- Effective communication
- Staffing
- Individual concerns
- Forms

Poor compliance:

- § Addressing the issue of mentally ill parolees unable to meaningfully participate in revocation proceedings
- § Hearsay evidence limited by parolees' confrontation rights

Unknown status:

- § Standards and guidelines for appointed counsel
- § Expedited probable cause hearings
- § Designating information as confidential
- § Presenting evidence at probable cause hearing
- § Parole Administrator review

Recommendations

Although there are no special recommendations to the Court at this time, it is recommended that the Defendants pay particular attention to the observations made by the Special Master throughout this report as more stringent recommendations may be necessary in the next term.

Respectfully submitted,

_/s/Chase Riveland

Chase Riveland

Special Master DATED: April 28, 2008

[1] Stipulation and Order Regarding Remedial Sanctions, Apr. 3, 2007
[2] CDCR Policies, 07-39, 07-41, and 07-42
[3] Informal communication with Defendants
[4] Informal communication with Defendants

[5] CDCR Policy 07-40
[6] Excel spreadsheet with the file name RMSC Weekly Count 1-3-08
[7] Source material appears to contain a typographical error when referring to 2006
[8] Excel spreadsheet with the file name RMSC Weekly Count 1-3-08.
[9] Informal communication with Defendants
[10] Source is the PSC August and December 07 excel spreadsheets
[11] Remedial Sanction Monthly Workload Feb. 2008
[12] Source for preceding paragraph: informal communications with Defendants
[13] Informal communication with Defendants
[14] Source for this is an e-mail from Loren G. Stewart, 1/23/08
[15] Source is a conversation with DAPO program specialist
[16] See Plaintiff's Preliminary Report re: March 13, 2008 visit to Region IV ICDTP facilities.
[17] Informal communication with Defendants
[18] Fluctuations in the San Francisco jail-based program resulted in a drop from 30 to 15 beds in October and back to 30 in November
[19] Informal communication with Defendants
[20] Informal communication with Defendants
[21] See Plaintiffs Preliminary Monitoring Report for Region IV Community-based ICDTP, March 13, 2008.
[22] See Charter for DAPO to DARS transition process for ICDTP
[23] See documentation provided to OSM and Plaintiffs at the February 28th meeting – document with file name Provider List by Region.pdf
[24] Informal communications with Defendants
[25] Table One and Two are based on the Special Master's analysis of DAPO ICDTP Weekly Report
[26] This figure is from the last day of each month. It is calculated by adding new enrollments to existing participants and subtracting releases.
[27] The Paroles Division data shows San Bernardino decreasing from 60 to 58 beds from January 2008 to February 2008. Another discrepancy in the data is the number of community-based ICDTP beds decreasing from 118 in January to a projected 110 in April 2008.
[28] Informal communication with Defendants
[29] Document with the file name ICDTP Dually Diagnosed Matrix.doc
[30] See August 29, 2007 letter to defendants from Loren G. Stewart
[31] Document with the file name 2-08 Draft ADA P&P.pdf
[32] Source is February EID Monthly Workload Report
[33] Per conversations with Defendants' staff in March 2008
[34] Special Master's observations and conversations with Defendants
[35] Source for the following two paragraphs: Monitoring reports for visits to LACJ Feb. 2008, NKSP Jan. 2008, SQ Dec. 2007, RCCC Nov. 2007 (both parties' reports), SR Nov. 2007, LACJ Oct. 2007, CIM Oct. 2007
[36] *Id.*
[37] Excel spreadsheet titled Postponed and Canceled Hearings spanning Sept. 15, 2007 through Feb. 13, 2008.
[38] Sources for this paragraph are conversations with Defendants and written updates provided on Feb.5, Feb. 25, Mar. 3, and Mar. 20, 2008
[39] Informal communication with Defendants
[40] This paragraph, and the two that follow, are based on the Special Master's analysis of the summary provided in letter form, dated Mar 1, 2008 from Rhonda Skipper-Dotta to Lori Rifkin, an Excel spreadsheet labeled Psych Suspension Log 2-29-08, and review of a few of the relevant case summaries in RSTS.
[41] Special Master's onsite observations; see also, various monitoring reports
[42] Source for this section is document titled RSTS_SM Schedule
[43] Valdivia Staff Vacancy Report, Mar. 4, 2008
[44] Per conversations with Defendants in Feb. and Mar. 2008; Special Master's observations of preparation paperwork and monitoring method during Los Angeles County Jail visit in Feb. 2008
[45] Defendants' self-monitoring reports for site visits to SQ in Dec. 2007, DVI in Jan. 2008, and LACJ in Feb. 2008; conversations with Defendants throughout 2008
[46] Source for the next two paragraphs: conversations with Defendants in Feb. and Mar. 2008

[47] Special Master's analysis of Closed Case Summary by DRU spanning Oct. 15, 2007 through Mar. 4, 2008 and Open Case Summary by DRU for nine dates spanning Nov. 2, 2007 through Mar. 4, 2008

[48] When reporting on notice of rights, CalPAP's system also does not include cases where a verification is absent from the packet.

[49] Informal communications with the parties

[50] Valdivia Action Items Log

[51] Per conversations with Defendants in March 2008

[52] Date Case Assigned Compliance Report for each month from Sept. 2007 through Jan. 2008

[53] This is derived by calculating 91% of the 96% of cases whose timeliness is known

[54] Document titled Add-On Cases Summary, CalPAP Regional Offices, Sept. 1, 2007 through Jan. 31, 2008

[55] Per conversations with Defendants in Feb. 2008

[56] *See, e.g.,,* Defendants' self-monitoring reports for site visits of RCCC in Nov. 2007 and SQ in Dec. 2007

[57] *See, e.g.,* Plaintiffs' reports for site visits of Inglewood in Aug. 2007, Long Beach in June 2007, and Eureka in May 2007

[58] See detailed discussion in section concerning effective communication, below

[59] Source for this paragraph is monitoring reports for site visits from Sept. 2007 through Dec. 2007

[60] Plaintiffs' monitoring report for CIM visit in Nov. 2007

[61] Special Master's observation and conversation with Defendants onsite

[62] All figures in this section arise from the Special Master's analysis of California Parole Advocacy Program, Notice of Rights Compliance Report for each of Sept. 2007 through Jan. 2008.

[63] This is derived by calculating 90% of the 94% of cases whose timeliness is known

[64] Sources for this paragraph are all monitoring reports for visits from Sept. 2007 through Jan. 2008

[65] NOR Timeliness by DRU, Oct. 1, 2007 through Feb. 29, 2008; the total shown as "missed" was 450.

[66] Source: Special Master's analysis of the numbers presented in all available monitoring reports for site visits between December 2006 and December 2007. Recent monitoring with better methodology shows a somewhat lower percentage, 17%, while previous monitoring showed a 20% deficiency rate. The better methods will need to be applied to more institutions to determine whether the results are generalizable.

[67] Source: Special Master's analysis of the numbers presented in all available monitoring reports for site visits between March 2007 and December 2007; analysis separated and compared reports from this Round to those occurring earlier. Defendants' current monitoring method must be sustained before validity can be certain, but this gives a good indication.

[68] Sources for this section include the Special Master's onsite observations and interviews of Defendants' staff and CalPAP attorneys, and monitoring reports including Defendants' DVI report for visit in Jan. 2008, RCCC report for visit in Nov. 2007, and HDSP report for visit in June 2007.

[69] Informal communication with Plaintiffs

[70] REPORT AND RECOMMENDATION REGARDING MOTION TO ENFORCE PARAGRAPH 24 OF THE *VALDIVIA* PERMANENT INJUNCTION; Order dated March 25, 2008

[71] Source for this section: informal communication with Plaintiffs

[72] Special Master's analysis of Closed Case Summary by DRU spanning Oct. 15, 2007 through Mar. 4, 2008 and Open Case Summary by DRU for nine dates spanning Nov. 2, 2007 through Mar. 4, 2008

[73] Special Master's analysis of Closed Case Summary Timeliness reports spanning Oct. 15, 2007 through Mar. 4, 2008 and Open Case Summary per DRU per Valdivia Rules for nine dates spanning Nov. 2, 2007 through Mar. 4, 2008

[74] These are the cases culled by the timeliness rules applied in Defendants' data reports. Source: Special Master's analysis of the sources in the preceding endnote and Closed Case Summary by DRU and Open Case Summary by DRU for the parallel dates and time spans.

[75] This is derived by calculating 97% of the 87% of cases whose timeliness is known

[76] *See, e.g.,* Defendants' reports for Dec. 2007 SQ visit and Nov. 2007 RCCC visit

[77] Sources for this paragraph are all monitoring reports for visits from Sept. 2007 through Jan. 2008; Special Master's observations

[78] Special Master's observations

[79] Sources for this paragraph are all monitoring reports for visits from Sept. 2007 through Jan. 2008; Special Master's observations

[80] *See, e.g.,* Plaintiffs' report for Nov. 2007 Santa Rita County Jail and Oct. 2007 LACJ visits, Defendants' self-monitoring reports for Dec. 2007 San Quentin visit and RCCC visit in Nov. 2007

[81] *See, e.g.,* evidence put into the record for REPORT AND RECOMMENDATION REGARDING MOTION TO ENFORCE PARAGRAPH 24 OF THE *VALDIVIA* PERMANENT INJUNCTION; also, Special Master's observations and informal communications with the parties

[82] Excel spreadsheet titled Postponed and Canceled Hearings spanning Sept. 15, 2007 through Feb. 13, 2008.

[83] Excel spreadsheet titled RSTS Late Case Report; monitoring reports for site visits in Sept. 2007 through Jan. 2008

[84] Informal communications with the parties

[85] Over a six-month period, the Excel spreadsheet titled RSTS Late Case Report identified one case that was late for this reason. The Paragraph 27 log listed eight cases. The Excel spreadsheet titled Postponed and Canceled Hearings identified two such cases. The Special Master noted one occurrence in monitoring reports during the Round, in Plaintiffs' Nov. 2007 site visit of Santa Rita County Jail.

[86] *See, e.g.,* Plaintiffs' LACJ report for Oct. 2007 visit, Defendants' self-monitoring report for Nov. 2007 RCCC visit; also, Special Master's observations

[87] Source for this paragraph: monitoring reports for site visits from Sept. 2007 through Jan. 2008

[88] Closed Case Summary Timeliness reports spanning Oct. 15, 2007 through Mar. 4, 2008 and Open Case Summary per DRU per Valdivia Rules for nine dates spanning Nov. 2, 2007 through Mar. 4, 2008

[89] These are the cases culled by the timeliness rules applied in Defendants' data reports. Special Master's analysis of Closed Case Summary Timeliness reports spanning Oct. 15, 2007 through Mar. 4, 2008 and Open Case Summary per DRU per Valdivia Rules for nine dates spanning Nov. 2, 2007 through Mar. 4, 2008 and Closed Case Summary by DRU and Open Case Summary by DRU for the parallel dates and time spans.

[90] This is derived by calculating 98% of the 45% of cases whose timeliness is known.

[91] Source for this paragraph: monitoring reports for site visits from Sept. 2007 through Jan. 2008

[92] Special Master's analysis of Closed Case Summary by DRU spanning Oct. 15, 2007 through Mar. 4, 2008 and Open Case Summary by DRU for nine dates spanning Nov. 2, 2007 through Mar. 4, 2008

[93] Source for the next two paragraphs: Excel spreadsheet titled RSTS Late Case Report

[94] There were 4 delays for witnesses, only 1 of which indicated exigency. Operations obstacles included lockdowns, quarantines, parolee movement, transportation problems, and parolees out to court, for a total of 10 instances; almost all were heard in 5 to 7 business days, with two exceeding that.

[95] *E.g.,*with late transmission of violation reports or staff error, there were a total of two instances and hearings were scheduled within three additional working days

[96] Excel spreadsheet titled Postponed and Canceled Hearings spanning Sept. 15, 2007 through Feb. 13, 2008. This document shows a larger total, but 398 entries are not postponements; at this time, the data system requires users to enter optional waiver reviews and administrative corrections as postponements.

[97] These numbers are compiled by manual count from the above-referenced spreadsheet, attempting to control for duplicate descriptions of a reason and other inconsistent practices. As such, they may not be precise.

[98] There were few recorded instances of the state failing to issue a subpoena (8) and of hearings rescheduled because the witness could not enter the institution (4).

[99] Excel spreadsheet titled Postponed and Canceled Hearings spanning Sept. 15, 2007 through Feb. 13, 2008

[100] Per conversations with Defendants in Feb. 2008

[101] Per conversations with Defendants in Mar. 2008 and Special Master's observations

[102] Plaintiffs' report of a monitoring visit to Santa Rita County Jail in Nov. 2007

[103] Special Master's onsite observations

[104] Per conversations with Defendants in Mar. 2008

[105] Sources for the following two paragraphs are all monitoring reports for visits from Sept. 2007 through Jan. 2008; Special Master's observations

[106] Special Master's analysis of Closed Case Summary by DRU spanning Oct. 15, 2007 through Mar. 4, 2008 and Open Case Summary by DRU for nine dates spanning Nov. 2, 2007 through Mar. 4, 2008

[107] Per conversations with Defendants in Fall 2007, these are the reasons that cases would appear on the Closed Case or Open Case summaries, but not on the reports with timeliness rules applied, at the probable

cause step. During this Round, timeliness rules culled 9% of actions at this step, which amounts to 6% of the original holds.

[108] Special Master's analysis of Closed Case Summary Timeliness by DRU spanning Oct. 15, 2007 through Mar. 4, 2008 and Open Case Summary per Valdivia Rules by DRU for nine dates spanning Nov. 2, 2007 through Mar. 4, 2008

[109] These are the cases culled by the timeliness rules applied in Defendants' data reports. Special Master's analysis of Closed Case Summary Timeliness reports spanning Oct. 15, 2007 through Mar. 4, 2008 and Open Case Summary per DRU per Valdivia Rules for nine dates spanning Nov. 2, 2007 through Mar. 4, 2008 and Closed Case Summary by DRU and Open Case Summary by DRU for the parallel dates and time spans.

[110] This is derived by calculating 95% of the 85% of cases whose timeliness is known.

[111] Among the 262 probable cause hearings discussed in six recent monitoring reports (DVI and NKSP-Jan. 2008, SQ-Dec. 2007, SR and RCCC-Nov 2007, HDSP-Oct 2007), 15 (6%) were found to be late.

[112] Sources for this paragraph: Special Master's analysis of Closed Case Summary Timeliness by DRU covering Nov. 2, 2007 through Feb. 19, 2008

[113] Special Master's analysis of reports titled Open Case Detail by DRU and Closed Case Detail by DRU. These represented the institutions with the greatest number or percentage of late cases at the probable cause step according to Open Case Summary and Closed Case Summary run on 7 dates spanning Nov. 2007 through early Mar. 2008.

[114] Lengths of time exceeding the usual maximum revocation term may reflect data entry errors or parolees who incurred more time through in-custody conduct. Since they also carry the risk of being over-detentions, it would be advisable to review these reports periodically to be certain that there are no over-detentions or to correct any identified.

[115] Source: Excel spreadsheet titled Postponed and Canceled Hearings spanning Sept. 15, 2007 through Feb. 13, 2008; Closed Case Summary for the same time period

[116] In Round III, this printout captured 1,098 transportation issues over an eight-month period (an average of 137 per month). In this Round, the 426 events were distributed over five months (an average of 85 per month).

[117] These figures rely on a manual count from Excel spreadsheet titled Postponed and Canceled Hearings, including attempts to eliminate duplicates; as such, it may not be precise. A few entries are omitted, where the Special Master could not glean the meaning from the description or it was a matter of human error with very low occurrence and no pattern.

[118] Note: this also occurred 7 times at revocation hearing

[119] Source for next three paragraphs continue to be Excel spreadsheet titled Postponed and Canceled Hearings spanning Sept. 15, 2007 through Feb. 13, 2008

[120] Note that placement numbers were available only for ICDTP, where postponements sometimes occurred in PSAP. Thus, the denominator should be larger (to include PSAP placements) and this percentage might be somewhat lower.

[121] Telephonic Probable Cause Hearing Summary Sheets dated Sept. through Nov. 2007 and Dec. 2007 through Jan. 2008. These documents show an average of 80 telephonic hearings per month, which is 1% of the 7,312 average monthly closed probable cause hearings.

[122] Source for all figures in this section is the Special Master's analysis of Cases Missing 1073 & Source Documents-Monthly Report for each of Sept. 2007 through Jan. 2008

[123] Monitoring reports for site visits from Sept. 2007 through Dec. 2007

[124] Monitoring reports for CIM and RCCC in Nov. 2007 and LACJ in Oct. 2007

[125] Monitoring reports for site visits from Oct. 2007 through Feb. 2008

[126] Monitoring reports for site visits from Sept. 2007 through Dec. 2007

[127] Monitoring reports for site visits from Apr. 2007 through Jan. 2008

[128] Disability & Effective Communication System Accommodations Planned vs Provided, Sept. 1, 2007 through Jan. 1, 2008

[129] Special Master's observations; Defendants' self-monitoring report of LACJ site visit in Feb.2008

[130] Monitoring report for Nov. 2007 Santa Rita County Jail visit

[131] Monitoring reports covering visits from July 2006 through Feb. 2008

[132] Report titled BPH SLI Provided Report, whose contents span late Mar. 2007 through late Dec. 2007

[133] Per conversations with Defendants in Mar. 2008

[134] Source is Excel spreadsheets labeled 2008 Tape Request Log and 2007 Tape Request Log, using tape requests from Sept. 1, 2007 through Jan. 31, 2008. In a handful of other cases, duplicate requests were made too close in time for Defendants to reasonably have produced the tapes.

[135] Source for this section is Parole Administrator Statistics Sept. 2007 – Jan. 2008, one run for each DRU. The Special Master does not know whether any software logic causes cases not to be included in this report.

[136] Analysis in the Special Master's Third Report was based on an incorrect reading of the report.

[137] Valdivia Staff Vacancy Report, Mar. 4, 2008, and subsequent informal communications with Defendants

[138] Source for all information in this paragraph is Excel spreadsheet titled Valdivia problem cases; analysis is of the subset of entries spanning receipt from Sept. 1, 2007 through Jan. 29, 2008. This is supplemented by clarifying conversation with Defendants in March 2008.

[139] The following section is based on Policy 07-17 captured in a memorandum dated April 4, 2007, as well as on Defendant interviews

[140] Special Master's observations at Los Angeles County Jail, Defendants' self-monitoring report of site visit to HDSP in Aug. 2007, conversations with Defendants

[141] Per conversations with Defendants in Mar. 2008, Plaintiffs' email communication Feb. and Mar. 2008

[142] Revocation Hearings Conducted Within 50 Miles Violation Report, Sept. 2007 through Jan. 2008

[143] Excel spreadsheet titled Postponed and Canceled Hearings spanning Sept. 15, 2007 through Feb. 13, 2008

[144] Per Defendant interviews, staff looked to several sources to identify the full population of "extradition" cases. Working from what appeared to be the most complete list, staff audited every case in the month of August

[145] Untitled spreadsheet, computer file name is Extradition Study 8-07 files.pdf. These numbers may need to be adjusted slightly as a few seem incorrectly entered or calculated.

[146] Per Defendant conversations in Mar. 2008

[147] *See, e.g.,* spreadsheet titled Extradition Cases – Dec. 2007

[148] The preceding is based on conversations with Defendants in Mar. 2008

[149] Excel spreadsheet titled Postponed and Canceled Hearings spanning Sept. 15, 2007 through Feb. 13, 2008; Closed Case Summary for the same time period

[150] This was only 36 cases, about 8% of the total waivers. It cannot be said to be representative.